

9 FEBRUARY 1948

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of
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Defense' Witnesses

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Monday, 9 February 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE LORD PATRICK, Member
from the United Kingdom of Great Britain, not sitting
from 0930 to 1600; HONORABLE JUSTICE HENRI BERNARD,
Member from the Republic of France, not sitting from
0930 to 1200.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATOKI who is represented by counsel. The
5 surgeon of Sugamo Prison certifies that he is ill and
6 unable to attend the trial today. The certificate will
7 be recorded and filed.

8 Captain Brooks.

9 MR. BROOKS: I think that counsel that was
10 at the lectern had finished as I recall, your Honor.
11 If so, I am ready to start with KOISO's order of
12 proof.

13 THE PRESIDENT: KOISO is next in order.

14 MR. BROOKS: We now offer in evidence defense
15 document No. 3056. The prosecution tendered evidence,
16 through court exhibit No. 3756-A, transcript page
17 37,570, which seemingly suggests as if KOISO had
18 opposed the Army reorganization and had blamed War
19 Minister MINAMI on this matter, while in reality KOISO
20 had advocated that the Army reorganization be effected
21 at once. This document, which is now being introduced
22 and constitutes an excerpt from the SAIONJI-HARADA
23 Memoirs, immediately follows another excerpt, namely
24 court exhibit No. 3756-A in question, tendered by the
25 prosecution. It is clear on the face of this excerpt

1 that the prosecution's contention is wholly unfounded.
2 We therefore tender this document in rebuttal.

3 THE PRESIDENT: Mr. Sutton.

4 MR. SUTTON: May it please the Tribunal, the
5 prosecution objects to this as not in answer to anything
6 new introduced by the prosecution in its rebuttal phase.

7 We further object on the ground that it
8 appears from the SAIONJI Dairy that there is a sen-
9 tence between the two paragraphs that appear in this
10 document. It further appears that the last paragraph
11 is a quotation beginning with quotation marks; it con-
12 tains two sentences, only one of which is offered in
13 this document.

14 MR. BROOKS: If the Tribunal please, the sen-
15 tence that was omitted, I am willing to read it in.
16 However, the excerpt that I have is taken from the
17 Japanese original and I do not believe that that sen-
18 tence appears in the Japanese.

19
20 THE PRESIDENT: We are not yet clear what
21 bearing it has on KOISO's case.

22 MR. BROOKS: In my running commentary I men-
23 tioned the exhibit already introduced by the prosecution
24 which suggests that KOISO had been opposed to Army
25 reorganization. We have had evidence that KOISO had
talked about the Army reorganization plan, and the

1 balance of this excerpt mentions one of the very pro-
2 jects with which he had some connection. It will be
3 clear from the study of the other evidence. And War
4 Minister MINAMI had testified as to his activities and
5 the help of KOISO in this reorganization plan. There-
6 fore I thought that this bears out further his state-
7 ment and rebuts the prosecution's evidence offered,
8 which was only a partial excerpt.

9 THE PRESIDENT: By a majority the objection is
10 sustained and the document rejected.

11 MR. BROOKS: I now offer in evidence defense
12 document 3057 for the purpose of rebutting the allega-
13 tion in prosecution exhibit 3801-B, record page 37,814,
14 that KOISO had advocated the conclusion of the Tripar-
15 tite Pact in order to settle the Chinese problems, and
16 we will also show that KOISO had opposed the Tripartite
17 Pact from the very beginning, and that the entries of
18 SAIONJI-HARADA Memoirs lack consistency, being based
19 either on hearsay or on the speculations of HARADA him-
20 self.
21

22 THE PRESIDENT: Mr. Sutton.

23 MR. SUTTON: The prosecution objects to this
24 document as not in answer to anything new brought out
25 by the prosecution in its rebuttal phase.

MR. BROOKS: I have nothing further to add,

1 if your Honors please. I think if the Court recalls
2 what was in exhibit 3801-B, that this does meet the
3 issues there.

4 THE PRESIDENT: By a majority the objection is
5 overruled and the document admitted on the usual terms.

6 CLERK OF THE COURT: Defense document 3057
7 will receive exhibit No. 3888.

8 (Whereupon, the document above re-
9 ferred to was marked defense exhibit No. 3888,
10 and received in evidence.)

11 Mr. BROOKS: I will now read exhibit No. 3888.

12 "Excerpt from 'HARADA SAIONJI Memoir' Chapter
13 321 (18 April 1939)

14 "Since I was watched that closely, I thought
15 it bad policy to visit ARITA publicly, so I met him at
16 the wake services for SAITO. Colonel IWAKURO had also
17 sent a man to ARITA to urge the establishment of the
18 military alliance. They desired ARITA's cooperation
19 on the matter. ARITA said: 'I cannot do any more;
20 let it be compromise or anything else.
21

22 "'Furthermore, the situation is favorable now
23 so sit tight. I (ARITA) told this to them and IWAKURO
24 seemed to be satisfied with my answer. IWAKURO had
25 always supported General KOISO but IWAKURO had been
~~pressed by KOISO that since the situation concerning~~

1 this matter would not, in reality, progress any fur-
2 ther, it was absolutely unavoidable. Therefore,
3 IWAKURO has also calmed down. In any event, the deci-
4 sion of the Premier is important."

5 The next document, if your Honors please,
6 defense document 3060, is offered for the purpose of
7 rebutting the prosecution exhibit 3801-B, record
8 37,814, to show that KOISO opposed the Tripartite Pact.
9 This witness is not desired by the prosecution for
10 cross-examination.

11 THE PRESIDENT: Admitted on the usual terms.
12 Are you objecting, Mr. Sutton?

13 MR. SUTTON: May it please the Tribunal,
14 the prosecution objects to this document on the ground
15 that KOISO testified about the contents of the alleged
16 note, and this appears to be an attempt to support the
17 testimony of KOISO which, we respectfully submit, is
18 improper at this stage. When this testimony was orig-
19 inally offered by the same witness, objection was made
20 on the ground that the alleged letter was not produced
21 or its absence accounted for. We respectfully submit
22 that the same objection still applies.
23

24 MR. BROOKS: I notice the prosecution has not
25 pointed out in the record where this letter was offered
and rejected. The letter has not been offered because

1 it could not be found, as was made apparent to the Court
2 in KOISO's individual case. KOISO, himself, testified
3 as to the messenger being sent to him in this arbitra-
4 tion matter, and testified as to what the answer was
5 that he gave and his reasons for it, and this not only
6 substantiates KOISO's testimony but rebuts the prosecu-
7 tion's exhibit 3801-B at record page 37,814.

8 THE PRESIDENT: By a majority the objection is
9 sustained and the document rejected.
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1 MR. BROOKS: If your Honors please, I see that
2 I put this document in in the wrong order. There was a
3 certificate to meet the objection of the prosecution
4 which is document 3058. This certificate, issued by
5 the Document Section of the Demobilization Bureau,
6 Welfare Ministry, certifies that this document is no
7 longer in existence in their file, and that the docu-
8 ment addressed to the Vice-Minister of War YAMANAKI from
9 Overseas Minister KOISO mentioned in the document just
10 rejected in the early part of May, 1939, concerning
11 the latter's opposition to the conclusion of the Japan-
12 Germany-Italy Tripartite Pact, and I believe that if
13 this document is now offered, this certificate, with
14 defense document 3060, it would meet the prosecution's
15 objection.

16 I would like to reoffer the two documents
17 together, if that is agreeable.

18 THE PRESIDENT: Mr. Sutton.

19 MR. SUTTON: May it please the Tribunal,
20 IWAKURO testified before the Tribunal, transcript
21 32,494 to 32,501. We respectfully submit that the
22 absence of an alleged letter written by YAMANAKI is
23 not sufficiently accounted for by the document tendered,
24 3058. To say that the letter is not at this time in
25 the possession of the Demobilization Bureau of the

Welfare Ministry we respectfully submit, does not
1 account for its absence for, so far as this document
2 shows, the letter might well be in the possession of
3 the person to whom it was addressed, YAMANAKI.

4 The same objection was made and sustained
5 at the time IWAKURO was testifying, record 32,494 to
6 501.

7 MR. BROOKS: Your Honors will recall that
8 not only KOISO and IWAKURO but other witnesses that had
9 seen this letter testified that they had seen it and
10 this matter was in their minds, but the Court wouldn't
11 allow the contents of the letter to be given or the
12 gist of it by any of these people unless we produced
13 a certificate.
14

15 Through error I should have presented this
16 certificate first and I think that since the certificate
17 has been presented we should allow secondary evidence
18 from this man as to what the contents of that letter
19 are, especially when it is in rebuttal to the rankest
20 form of hearsay from the SAIONJI-HARADA Diary.

21 THE PRESIDENT: No Member who voted for
22 the rejection of the document has notified me that
23 he desires to change his mind.
24

25 Both documents are rejected.

MR. BROOKS: We next offer the affidavit of

1 the witness ISHIWATA, Sotaro, for the purpose of contra-
2 dicting prosecution exhibit 3806-A, transcript page
3 37,841, which has reference to Education Minister
4 ARAKI's alleged statement that KOISO had insisted upon
5 the issuance of counterfeit notes at a cabinet meeting.

6 This witness is not desired for cross-
7 examination by the prosecution.

8 THE PRESIDENT: Any objection?

9 Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 3059
11 will receive exhibit No. 3889.

12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 3889 and received in evidence.)

15 MR. BROOKS: I now read exhibit No. 3889, the
16 affidavit of ISHIWATA, Sotaro, omitting the formal
17 parts:

18 "1) From January 1939 to August 1939 I was
19 Minister of Finance in the HIRANUMA Cabinet.

20 "2) It is quite inconceivable that concern-
21 ing the falsification of Chinese paper moneys, a matter
22 affecting so seriously the credit of Japan, a member
23 of the cabinet should have made a careless statement
24 without any arrangement beforehand with the Finance
25 Minister. As Finance Minister I was never consulted

1 by Overseas Minister KOISO on subjects of this kind.
2 Nor do I remember Mr. KOISO making such a statement at
3 any Cabinet Conference."

4 Signed: "On this 28th day of January 1948.

5 "At Tokyo.

6 ISHIWATA, Sotaro."

7 The prosecution, in Court exhibit No. 3754-B,
8 transcript page 37,567, being an excerpt from the
9 SAIONJO-HARADA Memoirs, contradicted KOISO's statement
10 concerning the KOKUHONSHA. In court exhibit No. 3756-A,
11 transcript page 37,570, they alleged that KOISO, when
12 he was the Chief of the Military Affairs Bureau, had
13 opposed the reorganization of the Army. And in court
14 exhibit No. 3801-B, transcript page 37,814, they asserted
15 that KOISO had advocated a Japanese-German-Italian
16 Alliance. Prosecution further tendered in evidence
17 court exhibit No. 3806-A, transcript page 37,841, as
18 throwing an unfavorable light upon the character of
19 KOISO. It is, however, our contention that what the
20 prosecution has attempted to establish is quite contrary
21 to the facts.

22 In order to prove that it is so and thereby
23 to rebut the prosecution's allegations, we ask the
24 permission of the Tribunal to offer the affidavit of
25 KOISO, Kuniaki.

1 If the prosecution desires him to take the
2 witness stand --

3 The prosecution does not desire him for cross-
4 examination.

5 I, therefore, offer defense document 3066,
6 a further affidavit of KOISO, Kuniaki, in rebuttal.

7 THE PRESIDENT: Mr. Sutton.

8 MR. SUTTON: May it please the Tribunal:

9 The prosecution objects to this affidavit on
10 the ground that it is repetitive, argumentative, and
11 not in reply to any new evidence introduced in its
12 rebuttal phase. We object specifically to the following
13 parts of the affidavit:

14 1. To the entire Section 1, pages 1 to 3 of
15 the document, in which the witness discusses his
16 relationship with HARADA and gives his opinion of the
17 HARADA Diary, on the ground that it is repetitive.
18 The witness was asked on cross-examination about his
19 acquaintance with HARADA, transcript 32,402. He testi-
20 fied fully on this subject, stating in his testimony
21 that he had read all portions of the HARADA Dairy
22 applicable to him, transcript 32,405, and gave his
23 explanation of the entries in the diary as well as his
24 opinion of HARADA, transcript 32,406-7.
25

2. Section 2, pages 3 to 7 of the document,

1 is objected to as repetitive, the witness quoting
2 therein at length from the testimony which he gave be-
3 fore the Tribunal on 31 October 1947, transcript 32,206,
4 and discussing in great detail the circumstances surround-
5 ing the proposals to reduce the strength of the Army
6 in 1931 as to which he testified fully when he appeared
7 as a witness before the Tribunal. This section does not
8 reply to anything new brought out by the prosecution.
9 As to exhibit No. 3754-B, concerning the activities
10 of the Kokohonshu mentioned on page 4 of the affidavit,
11 KOISO was specifically asked on his cross-examination
12 concerning his membership in this society and testified
13 fully as to the purposes and activities of the society,
14 transcript 32,273-6. This exhibit was introduced in
15 rebuttal of his testimony. The last paragraph of
16 Section 2 of the affidavit, on pages 6 and 7, is further
17 objected to as containing only argument and conclusion
18 of the witness.

19 3. Section 3, pages 8 to 11 of the document,
20 which is a discussion of exhibit No. 3501-B, transcript
21 37,815, is objected to on the ground that the very
22 language of this excerpt from the HARADA Dairy concern-
23 ing the attitude of KOISO toward the Tripartite Alliance
24 was put to KOISO on cross-examination, transcript
25 32,402, and KOISO testified fully concerning it,

transcript 32,402-7. We respectfully submit that hav-
1 ing once denied his alleged statements at considerable
2 length, he is not entitled to deny them again at even
3 greater length and make an argument therein including
4 quotations from his previous testimony.
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1 4. All of section 4, pages 12 to 14 of the
2 document, is objected to except the second paragraph
3 on page 12. The witness was asked on cross-examina-
4 tion about his connection with the Kempeitai and if
5 he did not send the Kempei to China and Manchuria
6 disguised as laborers. He testified that he had no
7 recollection of having done so. (Record, 32,415-6.)
8 Exhibit 3806-A (Record 37,842) is in rebuttal of
9 that testimony of KOISO. The last paragraph on
10 page 12 and all of page 13 is argumentative and
11 purports to be a resume of testimony given before
12 the Tribunal.

13 5. Section 5, pages 15 to 17 of the
14 affidavit, is objected to on the ground that
15 exhibit 3757-A (Record 37,575) contains nothing
16 adverse to KOISO and requires no explanation on his
17 part. Although he states in the second sentence in
18 this section (page 15) that there is no reference to
19 him in the exhibit and "the exhibit itself does not
20 bear on me in any way," he discusses it at great
21 length. KOISO has already testified before the
22 Tribunal in full concerning all his knowledge of or
23 connection with the dispatch of TATEKAWA to Mukden.
24 (Record, 32,324-6). (That he did not know what
25 instructions TATEKAWA received, (Record 32,324) that

1 he did not discuss the purpose of the trip with
2 TATEKAWA before his departure (Record 32,326), and
3 that he had no arrangements or plans with TATEKAWA
4 in connection with the trip (Record 32,326), and that
5 TATEKAWA was sent on the mission by the Chief of the
6 Army General Staff (Record 32,207).

7 6. Section 6, pages 17 and 18 of the docu-
8 ment, is objected to as repetitive. KOISO testified
9 on cross-examination concerning his connection with
10 the KOKOHONSHU and the purposes of that organization
11 (Record 32,273-5). In this section of the document
12 he merely re-emphasizes and enlarges upon his previous
13 testimony, and after discussing exhibit 3754-B states
14 in the next to the last sentence of the affidavit,
15 "The exhibit itself does not concern me."

16 We respectfully submit that only such a
17 slight amount of this document is free from sub-
18 stantial objection that it should be rejected in its
19 entirety.

20 MR. BROOKS: I, of course, am unable to
21 follow and make notes on each objection that the
22 counsel has. However, I think if your Honors will
23 peruse this document that it speaks for itself. The
24 points where the prosecution has said that KOISO has
25 said that he is not concerned with various matters,

1 if they had accepted that, then there would be no need
2 to meet their evidence, and there would have been no
3 need for them to put in evidence in rebuttal; but they
4 did not accept it, and therefore that is why we are
5 explaining the connection, the facts, to show why
6 the rebuttal evidence is inconsistent. The prosecution
7 has relied heavily upon the evidence they have put in
8 which this rebuts. This is a matter of vital impor-
9 tance to the accused and he should be allowed, in my
10 submission, to meet it with his statements of fact
11 of the position and the reasons why certain statements
12 have been made.

13 THE PRESIDENT: By a majority the objections
14 are sustained and the document rejected -- unless you
15 are pressing that little bit about counterfeit money;
16 I do not know.

17 MR. BROOKS: I believe, if your Honors please,
18 that exhibit 3889 does cover, to a certain extent, the
19 matter of **counterfeit** money, and there is a sentence or
20 two on an errata sheet which your Honors should have
21 got this morning, which has been left out of this
22 document, that touches upon that very point.

23 That concludes for KOISO, if your Honor
24 pleases.
25

1 MR. NARITOMI: I should now like to tender
2 two defense documents on behalf of the accused
3 SHIRATORI.

4 THE PRESIDENT: Is SATO the next? I thought
5 there was --

6 MR. TAVENNER: If it please the Tribunal,
7 we were advised that that order list had been with-
8 drawn; so if there is any document now that they
9 desire to present, we would like an opportunity to
10 see it first because we had considered that nothing
11 would be offered.

12 THE PRESIDENT: Did you say SATO?

13 MR. NARITOMI: SHIRATORI, sir.

14 THE PRESIDENT: We were told that that list
15 was withdrawn.

16 MR. NARITOMI: Numbers 1 to 6 on the order
17 list were withdrawn. We should like to present
18 document No. 7 on the list.

19 THE PRESIDENT: Does Mr. Caudle agree with
20 that?

21 MR. TAVENNER: If the Tribunal please, we
22 were advised that the entire list had been withdrawn.
23

24 THE PRESIDENT: So were we.

25 MR. TAVENNER: For that reason we do not have
the document present, and we would like to have this

1 matter passed over for a few minutes until we can
2 assemble the documents.

3 THE PRESIDENT: You may renew your applica-
4 tion later.

5 Mr. Blewett.

6 MR. BLEWETT: If the Tribunal please, the
7 President intimated at the beginning of the Court
8 that he was under the assumption we were proceeding
9 in alphabetical order, but if I may be permitted I
10 am prepared to go ahead with TOJO at this time.

11 THE PRESIDENT: If nobody who should proceed
12 you is ready, we will take TOJO's now, Mr. Blewett.

13 MR. BLEWETT: Thank you, sir.

14 I have the witness YAMAGATA, but I am under
15 the understanding that the Russian prosecution will
16 not cross-examine.

17 MR. TAVENNER: There will be no cross-examina-
18 tion, if the Tribunal please.

19 MR. BLEWETT: We offer in evidence defense
20 document 3040, the affidavit of YAMAGATA. The prosecu-
21 tion through the witness Petersdorf offered evidence
22 that Japan had prepared for an attack on Soviet Russia
23 in an endeavor to rebut TOJO's testimony, record
24 38,415. Petersdorf testified that he heard of such
25 plans from TOJO and also from YAMAGATA in 1942 at the

1 Japanese General Staff, specifying the direction of
2 the attack to Vladivostok and Blagoveschensk, record
3 38,424. The evidence we now offer ~~contradicts~~ that
4 assertion absolutely.

5 THE PRESIDENT: Any objection?

6 Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 3040
8 will receive exhibit No. 3890.

9 (Whereupon, the document above
10 referred to was marked defense exhibit
11 3890 and received in evidence.)
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MR. BLEWETT: I shall read exhibit 3890.

1 "1. From October, 1939, to the end of
2 February, 1941, I was on the staff of the Second
3 Section (in charge of information) and in March, 1941,
4 appointed aide-de-camp to the Emperor. Later I held
5 posts as Air Brigade Commander, etc. I was a colonel
6 when I retired after the termination of the war in
7 1945.
8

9 "2. When I was still on the staff of the
10 Second Section of the General Staff Office, Fritz von
11 Petersdorf, a language officer of the Military Attache
12 Section of the Germany Embassy and assistant military
13 attache to the Embassy, called several times at the
14 Army General Staff Office for information. He wanted me
15 to furnish information chiefly regarding the progress
16 of hostilities in the China Incident, and, in return,
17 gave us information on the development of Germany's
18 operations in Europe. He referred to me in his affi-
19 davit (document 3,858) presented to the Court, stating
20 as follows (record page 38,424):
21

22 "When in 1942 I visited YAMAGATA in the
23 Japanese General Staff in reply to my question how the
24 Japanese intended to attack the Soviet Union showed me
25 in silence the Vladivostok and Blagoveschensk directions
on the map."

1 "The real fact, however, was entirely dif-
2 ferent from his statement.

3 "As stated above, I was appointed aide-de-camp
4 to the Emperor in March, 1941, and served in this
5 office until December, 1944. So during the year of
6 1942 I did not serve at the General Staff. Accordingly
7 it was impossible for him to visit me at the General
8 Staff Office during that year. Besides, the Second
9 Section, to which I belonged, handled information. In
10 Japan, affairs concerning military operations were handled
11 by the First Section, and belonging to the Second Section
12 I was in no position to have any connection with what
13 was called the plan of anti-Soviet operations. For
14 the above reasons, the above portion from Petersdorf's
15 affidavit is utterly at variance with the facts."

16 I offer in evidence defense document 3061,
17 being a certificate of the Last Demobilization Office
18 concerning the position of YAMAGATA, showing that in
19 March 1941 he was transferred from the Army General
20 Staff to the position of aide-de-camp to His Majesty.

21 This certificate, we submit, proves that he
22 was not connected with the General Staff in 1942, and
23 goes directly to the credibility of the prosecution
24 witness.
25

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 3061
will receive exhibit No. 3891.

(Whereupon, the document above
referred to was marked defense exhibit
No. 3891 and received in evidence.)

MR. BLEWETT: I shall read exhibit 3891.

"Certificate Concerning the Duties of Former
Colonel YAMAGATA, Arimitsu.

"YAMAGATA, Arimitsu, a former Colonel, was
appointed Military Aide-de-Camp to the Emperor on
1 March 1941 and continued in office until 21 December
1944. It is accordingly certified that he held no office
on the Army General Staff during the above-mentioned
period. The said fact became known on consulting the
'Army List' in the custody of the Personnel Section of
the Demobilization Bureau.

"This 31st day of January, 1948."

We offer in evidence defense document 3062,
the affidavit of AKITA, Hiroshi, and I understand no
cross-examination will be conducted of this witness.

THE PRESIDENT: No objection? Admitted on
the usual terms.

CLERK OF THE COURT: Defense document 3062
will receive exhibit No. 3892.

(Thereupon, the document above

referred to was marked defense exhibit
No. 3892 and received in evidence.)

MR. BLEWETT: I shall read exhibit 3892.

This is the sworn deposition of AKITA, Hiroshi.

"(1) I was Chief of the German Section of the Japanese General Staff Headquarter's Second Section, or Intelligence, from April 1941 to March 1943. I was successor to Colonel YAMAGATA. Major KANDORI was my subordinate.

"(2) In the sworn deposition of the witness Fritz von Petersdorf, produced at this Tribunal on January 29 of this year, my name is mentioned and it relates on matters concerning my having obtained information concerning the Soviet Union in 1941-42 from the Japanese General Staff Headquarters. I shall hereby mention those points of the above that are at variance with the facts.

"(3) If the aforesaid Petersdorf had obtained any information from General Staff Headquarters from March 1941 till the time of his departure to his country, there would have been no other way than to have obtained them through the Chief of the German Division, which was myself, or through my subordinate, but as a matter of practice Colonel Kretchmar used to come to me about twice a week for this purpose. It was only when

1 Kretchmar was unable to come on account of travel or
2 for some other reason that Petersdorf used to come. As
3 I recollect the matter such occasions were extremely
4 few. Further in such cases, I did not meet him, but
5 KANDORI did. And after an interview with him, it was
6 the practice for KANDORI to report to me on the conver-
7 sation that took place.

8 "(4) So-called intelligence at that time was
9 in gaining information from the German side about the
10 European war situation, and from our side reporting on
11 the Pacific War. It was very seldom that we furnished
12 the German side information concerning the disposition
13 of the Soviet Far Eastern Army, its number, transpor-
14 tation, reserve forces, etc. About the only time I
15 remember is when I was asked by Military Attache Kretch-
16 mar once if there was any news regarding the transfer
17 of a unit belonging to the Far Eastern Soviet Army to
18 the western front, as the Germans had discovered such
19 a unit in the European battle line. I inquired with
20 the Russian Section on this matter, but as there was
21 no positive proof, I replied to him to the effect that
22 'I have no definite knowledge on the matter.'

23 "(5) It is true that we received" -- I
24 think that word should be "received," your Honor --
25 "from Germany samples of grenades and their construction

1 plan. However, these were not a present to the Emperor
2 but were presented to General Staff Headquarters. And
3 it is not true that the grenades were turned over the
4 Chief of General Staff in a solemn ceremony. To say
5 also that it was decided that these be used chiefly on
6 the Manchurian front is absolutely unfounded."

7 We have at present the witness URESHINO,
8 and I have not heard whether or not the prosecution
9 wishes to examine the witness.

10 MR. TAVENNER: There will be no cross-
11 examination, if the Tribunal please.

12 MR. BLEWETT: We offer in evidence defense
13 document 3041, the affidavit of URESHINO.

14 Throughout the case, one of the important
15 issues has been the division of responsibility between
16 military administration and high command. Evidence on
17 this point has been introduced by both prosecution
18 and defense. The only remaining fact to be proved is
19 that of the sea transportation of prisoners of war
20 between the fronts and the Japanese mainland, which was
21 under the jurisdiction of the high command. The
22 Tribunal, through its President, questioned the defendant
23 TOJO regarding it. The evidence of this witness will
24 clarify the situation as to why exhibit 1965, an
25 instruction concerning sea transportation of prisoners

1 of war, was issued in the names of the Vice-Minister of
2 War and the Vice-Chief of the General Staff jointly.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 3041
5 will receive exhibit No. 3893.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 3893 and received in evidence.)

9 MR. BLEWETT: I shall read exhibit 3893, the
10 sworn deposition of URESHINO,

11 "From the outbreak of the Great East Asia
12 War in December 1941 until its end in August 1945, I
13 was continuously in the service of the 10th Section of
14 the Army General Staff, my last rank being lieutenant
15 colonel.

16 "The 10th Section, Army General Staff, was in
17 charge of shipping and railway transportation.

18 "Transportation from the field of operations
19 to Japan proper was handled by the Army General Staff.
20 It was controlled by such personnel as Director of
21 Transportation and Communications, Chief of Shipping
22 Command, and Chief of Shipping Transportation Command
23 under the Chief of General Staff.

24 "Those prisoners of war who were in PW camps
25 in the field were controlled by the local army commanders

1 under the supervision of the War Minister. In trans-
2 porting to Japan proper such PW's who were under the
3 General Control of War Minister, the War Ministry made
4 a request for their transportation to the General Staff
5 (usually to Chief of Shipping Transportation) and, thus,
6 such sea-transportation was carried out at the responsi-
7 bility of the General Staff. While aboard the ship in
8 the course of such transportation the Chief of PW
9 camp, or the acting chief, in charge of the PW group
10 being transported, comes under the supervision of the
11 War Minister. However, as far as the general matter
12 of transportation (including rations) is concerned, he
13 comes under the Chief of Transport Command and the
14 General Staff. The notification concerning PW trans-
15 portation, that is, court exhibit 1965, was sent from
16 the Vice-War Minister and the Vice-Chief of General
17 Staff in 1942 to the units concerned. This was sent
18 because, as mentioned above, the relationship between
19 War Ministry and General Staff with regard to the
20 transportation of PW's from the field to Japan proper
21 was such that it required cooperation from both of them.
22 It does not mean that the War Minister issued an order
23 as to the High Command with regard to the latter's
24 affairs."
25

That completes the testimony of the accused

1 TOJO.

2 THE PRESIDENT: Mr. Tavenner, are you ready
3 to go ahead with SHIRATORI?

4 MR. TAVENNER: The prosecution is ready, your
5 Honor.

6 MR. NARITOMI: I now present in evidence
7 defense document 2920 and a document which serves as
8 a basis thereof, defense document 2919.

9 Defense document 2919 is a letter written by
10 the accused SHIRATORI to Foreign Minister YOSHIDA after
11 his imprisonment at Sugamo Prison. However, this
12 letter was written before SHIRATORI was indicted.

13 What SHIRATORI is charged of by the prosecution
14 is the various matters which he advocated.

15 Correction: SHIRATORI is charged by the prose-
16 cution by the thought, the philosophy, which he enter-
17 tained. In order to understand exactly what philosophy
18 SHIRATORI has, one must examine all of the writings --
19 all of the various documents containing his writings.
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SHIRATORI strongly contends that the contents of this letter well express his fundamental philosophy and desires that this document be admitted into evidence.

One of the most noteworthy points mentioned in this particular document is that already on the 10th of December, 1945, SHIRATORI advocated that a provision be made in the Constitution for Japan's renunciation of war. From this we may say that SHIRATORI was one of the pioneers in the move to include such a provision in the Japanese Constitution.

Although the prosecution have tendered in evidence various essays and addresses made by SHIRATORI, and although these essays and addresses express his philosophy, it is our submission that this letter also very clearly expresses what SHIRATORI had always cherished as his thought and philosophy.

Defense document 2920 is an affidavit of the former Foreign Minister, YOSHIDA, Shigeru, certifying that SHIRATORI had always entertained the philosophy contained in the other document.

THE PRESIDENT: Mr. Sandusky.

MR. SANDUSKY: May it please the Tribunal, objection is taken to document 2920, the deposition of YOSHIDA, for the reason that it is no more than a certificate, as counsel has stated, certifying the

1 circumstances under which document 2919 was written.

2 THE PRESIDENT: Paragraph 4 goes beyond that.

3 MR. SANDUSKY: Since the document, Mr. President
4 would have no relevancy except with respect to document
5 2919, may I respectfully suggest that the objections to
6 both documents be considered at one time?

7 THE PRESIDENT: We do not have copies of 2919
8 yet.

9 MR. NARITOMI: I also tender in evidence defense
10 document 2919. I have already given my reasons for the
11 tender.

12 THE PRESIDENT: Yes, Mr. Sandusky.

13 MR. SANDUSKY: Mr. President, we object to the
14 both documents that have been tendered by counsel. My
15 reason for objecting to the YOSHIDA deposition has been
16 set forth already.

17 As to the letter itself, document 2919, we sub-
18 mit that it is highly objectionable as being wholly and
19 completely a self-serving declaration written by the
20 accused SHIRATORI after he had entered Sugamo Prison.
21 We submit that the political philosophy of the accused
22 SHIRATORI is to be determined from his acts and from his
23 writings during the period covered by the Indictment and
24 not from a declaration written in December of 1945.
25

This document is otherwise an amazing instrument

1 as will be seen from page 3 where the Tribunal is in-
2 vited to engage in a paper-cutting exercise. In the
3 main, the document deals with the possibility of Chris-
4 tianizing Japan and placing the Emperor in some sort of
5 Messianic position.

6 We have been able to discern nothing in this
7 document that concerns the charges in the Indictment,
8 nor the evidence that has been presented to this Tri-
9 bunal.

10 We respectfully urge the rejection of both
11 documents.

12 THE PRESIDENT: The objections are sustained
13 and the documents rejected.

14 MR. NARITOMI: May I have defense document 2919
15 marked for identification?

16 THE PRESIDENT: You can if you wish.

17 CLERK OF THE COURT: Defense document 2919 will
18 receive exhibit No. 3894 for identification only.

19 (Whereupon, the document above
20 referred to was marked defense exhibit
21 No. 3894 for identification.)

22 THE PRESIDENT: Who is next?

23 Major Blakeney.

24 MR. BLAKENEY: Your Honor, so far as it con-
25 cerns the four orders of proof with which I have

1 connection, I am afraid the documents haven't yet been
2 sent up, although they are ready.

3 THE PRESIDENT: Are you the last?

4 MR. BLAKENFY: No, sir. I think there are one
5 or two others who are in the same position.

6 THE PRESIDENT: We will recess for fifteen
7 minutes.

8 (Whereupon, at 1045, a recess was
9 taken until 1100, after which the proceed-
10 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Furness.

4 MR. FURNESS: If the Court please, in sur-
5 rebuttal to exhibit No. 3845, page 38,174 of the
6 transcript, I offer in evidence defense document No.
7 3063, affidavit of MATSUMOTO Shun-ichi.

8 This affidavit shows that the office in
9 charge of Japanese nationals in enemy countries was
10 established only as a semi-official office within the
11 Foreign Ministry, not by governmental or cabinet ac-
12 tion; that it did not implement Article I of the
13 Imperial Ordinance relating to the organization of the
14 Foreign Ministry, exhibit No. 76, as alleged by the
15 prosecution in offering exhibit 3845; and that by this
16 administrative action the Foreign Ministry did not and
17 could not assume new or expanded duties, including the
18 treatment of prisoners of war.

19 Attention is called to the correction by
20 the Language Board of the certificate of HAYASHI,
21 Chief of the Archives Section of the Foreign Office,
22 which in the English text originally stated that the
23 draft was "approved by higher office" to "approved by
24 superiors," transcript page 38,665.
25

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Defense document No.
3 3063 will receive exhibit No. 3895.

4 (Whereupon, the document above
5 referred to was marked defense exhibit 3895
6 and received in evidence.)

7 MR. FURNESS: I read exhibit 3895, omitting
8 the formal parts:

9 "2. I was Vice-Minister for Foreign Affairs
10 from November 1942 until October 1944.

11 "3. In the autumn of 1942, with the progress
12 of the war, the duties of the Foreign Ministry concern-
13 ing management of matters relating to Japanese nationals
14 resident in enemy countries became so onerous that, in
15 view of the fact that such matters were within the jur-
16 isdiction of the Foreign Minister, the Chief of the
17 Second Section of the Treaty Bureau of the Foreign
18 Ministry was charged with drafting a plan for the es-
19 tablishment of a bureau in the Foreign Ministry to
20 assume specific responsibility for these matters. Thus
21 in November 1942 a plan was drawn for the "Bureau in
22 Charge of Japanese Nationals Resident in Enemy Countries,"
23 and in the middle of that month the Bureau was estab-
24 lished, commencing to function from 1 December. Its
25 title, as it was established, did not include the words

"and Enemy Nationals Residing in Japan."

1 "4. The Bureau in question was a mere
2 intra-ministerial office of the Foreign Ministry. It
3 was not such a bureau (kyoku) as was established by the
4 Government Organization Law, but was a mere administra-
5 tive office (jimushitsu) within the Foreign Ministry,
6 and was thus only a semi-official office. Its very name,
7 Zai Tekikoku Kyoryumin Kankei Jimushitsu, indicates
8 its semi-official status. This bureau was therefore one
9 to which was designated certain matters already within
10 the competence of the Ministry, but it was not estab-
11 lished by that Cabinet or Government action which signi-
12 fies the assignment of new or different responsibilities
13 to a government organ (it was established wholly by
14 this ministerial action, not by regulations, ordinance,
15 or law). The Bureau was established with the approval of
16 the Foreign Minister. No approval for its establishment
17 by any source higher than the Foreign Ministry was needed
18 or obtained. I have been shown exhibit No. 3845, which
19 in the English translation refers to 'approval of
20 superiors.' The words of the original Japanese, 'Kosaian,'
21 as they are used constantly in the Foreign Ministry,
22 mean a draft submitted for 'approval of the higher
23 officials' within the Foreign Ministry. This approval
24 may be given by the Minister, or by the Vice-Minister
25

on his behalf, according to the nature of the matter involved; in this case, the draft was approved by the Foreign Minister. Such action did not, could not, and was not intended to assume new or expanded duties beyond the competence of the Foreign Ministry, which competence did not include treatment of prisoners of war, visits to camps except in so far as liaison and correspondence was concerned.

"5. During my tenure of office as Vice-Minister, the Bureau dealt with matters relating to Japanese nationals resident in enemy countries--correspondence concerning their status and condition--as matters falling within the duties of the Foreign Ministry. Matters concerning the treatment of enemy prisoners of war and internees, visits to camps, etc., which were the concern of the Bureau only in so far as it had to conduct the liaison with the authorities in charge of these enemy nationals subject to Japanese authority and, as representative of the Foreign Ministry which is the agency dealing with external affairs, to conduct the correspondence with foreign countries, Red Cross organizations, and their representatives concerning such matters. The work of this Bureau was the same as that theretofore conducted by the Treaty Bureau relating to such matters.

"6. I have been shown defense document No.

1 3022, which I identify as a proposal relating to expansion
2 of the Bureau in Charge of Japanese Nationals
3 Resident in Enemy Countries, and which correctly states
4 the scope of the duties of that Bureau as they existed
5 and were discharged during my tenure of office as Vice-
6 Minister.

7 "7. I have been shown defense document No.
8 3064, which I identify as a circular addressed by Minister
9 SUZUKI, Chief of the Bureau above mentioned, to
10 the Directors of Bureaus and Chiefs of Sections of the
11 Foreign Ministry informing them of the change in the
12 name of the Bureau from that proposed in the original
13 draft to the name under which it functioned."

14 I next offer in sur-rebuttal to exhibit No.
15 3845, defense document No. 3022, referred to in the
16 previous exhibit, which shows the functions and duties
17 actually performed by the Office in Charge of Japanese
18 Nationals in Enemy Countries. I intend to read only
19 paragraph 3 on page 2, which shows that its work was
20 liaison business and should be read in comparison with
21 paragraph 3 of exhibit 3845, page 38,175 of the transcript.
22 The Japanese text of this paragraph is exactly
23 the same in the two documents except that the defense
24 document contains the significant word meaning "liaison."
25

THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Defense document 3022
2 will receive exhibit No. 3896.

3 ("Whereupon, the document above
4 referred to was marked defense exhibit
5 No. 3896 and received in evidence.)

6 MR. FURNESS: I will read paragraph
7 numbered 3 on page 2 of the English text.

8 "Liaison business relating to enemy nationals
9 who are prisoners of war, internees, or residents in
10 camps under Japanese authority.

11 "Liaison business relating to the treatment,
12 of the above-mentioned enemy nationals (clothing, food,
13 living quarters, inquiries into their safety, furnishing
14 of lists, appointment of, and visits by the countries
15 representing their interests and representatives of the
16 International Committee of the Red Cross, correspond-
17 ence, relief, labor, punishment, repatriation, etc.).

18 "Such liaison business includes that of the
19 handling of outgoing communications to representations
20 from enemy countries and other sources."

21 I now offer in evidence defense document No.
22 3064, a circular addressed to the directors of bureaus
23 and chiefs of sections, showing the correct name of the
24 bureau, that the name suggested in the draft, exhibit
25 No. 3845, was changed, confirming the testimony of

1 SUZUKI, page 12,830 of the transcript, and contradict-
2 ing the allegation of the prosecutor on page 38,173 of
3 the transcript.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Defense document No.
6 3064 will receive exhibit No. 3897.

7 (Whereupon, the document above re-
8 ferred to was marked defense exhibit No.
9 3897 and received in evidence.)

10 MR. FURNESS: I will read the body of that
11 document:

12 "The commencement of the business of the
13 Bureau in Charge of War-Time Internees has been noti-
14 fied by our circular of the 30th ultimo. This is to
15 inform that the name of the same Bureau has been changed
16 as follows:

17 "The Bureau in Charge of Japanese Nationals
18 in Enemy Countries."

19 I offer in evidence defense document No. 2848,
20 the affidavit of SUZUKI Tadakatsu, the chief of the
21 bureau in charge of Japanese nationals in enemy countries
22 from December 1942 until the end of the war in August
23 1945, and sets forth the actual duties and functions
24 performed by that office and the limits of the com-
25 petency of the Foreign Office in such matters. It is

1 offered in reply to exhibit 3845, page 38,074 of the
2 transcript.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 2848
5 will receive exhibit No. 3898.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 3898 and received in evidence.)

9 MR. FURNESS: I will read that exhibit,
10 omitting the formal parts:

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"1. I was Japanese Minister to Egypt from 1940, and returned to Japan in August 1942, by boat on the occasion of the exchange of British and Japanese diplomats, and until August 1945 I was Chief of the Bureau in Charge of Japanese Nationals in Enemy Countries, which was established in December 1942. I am at present head of the Yokohama Branch of the Central Liaison Office.

"2. I held the post of Chief of the Bureau in Charge of Japanese Nationals in Enemy Countries under Foreign Minister SHIGEMITSU from April 1943 to April 1945, and under Foreign Minister TOGO from April 1945 to August of the same year. The Bureau in Charge of Japanese Nationals in Enemy Countries was in charge of matters concerning the protection of Japanese residents in enemy countries, which matters were under the jurisdiction of the Foreign Minister, and formed part of his duties to protect Japanese residents in foreign countries. Matters pertaining to prisoners of war in Japanese hands belonged to the jurisdiction of the War Minister, while matters concerning enemy civilian internees who were located in Japan Proper belonged to the authority of the Home Minister. In view, however, of the collateral relations between the duties of my Bureau to protect Japanese residents in enemy countries

1 and the matter of the treatment of prisoners of war and
2 civilian internees in Japanese hands, Foreign Minister
3 TANI, who first established the Bureau of which I was
4 Chief, as well as Foreign Ministers SHIGEMITSU and TOGO,
5 his two successors, charged my Bureau, for convenience'
6 sake, with the duties of transmitting requests for infor-
7 mation and protests concerning prisoners of war and
8 civilian internees, which came from enemy countries
9 through neutral representatives of enemy interests, to
10 the above-mentioned competent authorities.

11 "3, Mr. SHIGEMITSU, who became Foreign Minister
12 in April 1943, showed a special interest in the matter
13 of prisoners of war and civilian internees. He often
14 mentioned to me a Maxim: 'War is only temporary, but
15 humanity permanent.' I always endeavored to live up to
16 what Mr. SHIGEMITSU meant.

17 "A great difficulty, however, was felt in
18 realizing Mr. SHIGEMITSU's idea owing to the complete
19 lack of jurisdiction on the part of the Foreign Ministry
20 over prisoners of war and civilian internees. When, for
21 instance, the Foreign Ministry was requested by any
22 foreign country to supply information regarding prisoners
23 of war or civilian internees, or had received protests
24 against their alleged ill-treatment, the Foreign Ministry
25 had no means to make direct inspections, or directly to

1 collect information concerning them. When the Foreign
2 Ministry was approached by neutral representatives with
3 requests for permission to visit camps or to send goods
4 for relief to prisoners of war and civilian internees,
5 the Foreign Ministry had no competence to permit the
6 desired visits, nor had it the means to transport relief
7 goods; the only thing which the Foreign Ministry was in
8 a position to do being to transmit such requests to the
9 competent authorities and await their action. In spite
10 of all this, Mr. SPIGEMITSU ordered me to do my best on
11 every occasion in order to contribute to the amelioration
12 of the treatment of prisoners of war, and in compliance
13 with this order I did my best.

14 "4. Whenever a communication was made by an
15 enemy country in regard to the matter of prisoners of
16 war, my Bureau transmitted the matter to the competent
17 authorities promptly and accurately, as soon as Japanese
18 translation of such communication had been made, by
19 official note, and sometimes also orally. In case replies
20 were not received in due course, my Bureau endeavored to
21 press for them.

22 "The method of transmission by writing was
23 described in my affidavit, exhibit No. 2782. In order
24 to transmit or press orally, I often took advantage of
25 the conferences of the officers and officials in charge

1 of the Ministries concerned, regarding the protection
2 of Japanese residents in enemy countries, held in my
3 Bureau usually twice a month. These conferences were
4 attended by officers or officials in charge of the War,
5 Navy, Home Affairs, Transportation, Communications,
6 Finance and other Ministries. From the War and Navy
7 Ministries, officers in charge of the Prisoner of War
8 Information Bureau, the Military Affairs Section of the
9 Military Affairs Bureau of the War Ministry, and the
10 2nd Section of the Naval Affairs Bureau of the Navy
11 Ministry joined these conferences.

12 "It is true that these conferences were concerned,
13 as stated above, with the duties of the Foreign Ministry
14 to protect Japanese residents in enemy countries, and
15 that on these occasions we were not at liberty to take
16 up the matter of prisoners of war as such. But I referred
17 indirectly to matters concerning prisoners of war in
18 connection with the question of protecting Japanese
19 residents in enemy countries, or after the conferences
20 my subordinates or I myself talked tete-a-tete with the
21 officers of the competent authorities in charge of these
22 matters.
23

24 "5. Whenever the Foreign Ministry had occasion
25 to transmit request for information, or a note of protest,
regarding prisoners of war, it made efforts to see that

1 their treatment be improved. I may cite an instance.
2 When the long protest of the United States Government,
3 exhibit No. 2024, was received in February 1944, Foreign
4 Minister SHIGEMITSU himself called the attention of the
5 War Minister, and ordered me to avail myself of the
6 occasion of this protest for home consumption in order
7 to assure a better treatment of prisoners of war. He
8 stated that I should on this occasion call the attention
9 of the competent authorities to this matter with the
10 object of (1) correcting the situation if the facts
11 contained in the protest should happen to be in any way
12 true, and more than that, (2) of expediting the solution
13 of the question of visits to camps, for which neutral
14 representatives had frequently requested without
15 obtaining satisfactory results, of pressing for replies
16 to unanswered inquiries about information on various
17 subjects, and of facilitating solution to other matters.
18 I endeavored in compliance with this order. As the
19 result of this, improvements were achieved, viz. relief
20 goods were accepted from the Allied Powers in order to
21 distribute them among prisoners of war, relief funds were
22 delivered to prisoners of war and civilian internees,
23 facility was given to them to dispatch telegrams, and
24 steps were taken towards the solution of the question of
25 permission to visit camps in occupied territories.

1 "Further, in calling the attention of the
2 competent authorities to matters concerning prisoners of
3 war and civilian internees, Mr. SHIGEMITSU ordered us to
4 use as materials information from enemy sources also,
5 even if not based on official protests. One instance
6 was the telegram from Minister SHICHIDA in Afghanistan,
7 being defense document No. 2849, which was then sent to
8 the Chief of Prisoner of War Information Bureau."

9 Since I do not intend to offer the document
10 referred to in the next sentence, I will not read it.

11 (Reading continued) "6. As far as matters of
12 prisoners of war were concerned, the Foreign Ministry
13 had no competence over their treatment or to collect
14 information regarding them. Mr. SHIGEMITSU, however,
15 thought of a plan, about April or May, 1944, to set up in
16 the Cabinet something like an international laws and
17 customs committee, to have it discuss the question of
18 prisoners of war. Dr. YAMAKAWA, Tadao, ex-Director of
19 the Treaty Bureau and an authority on international law,
20 together with myself, worked on this plan under Mr.
21 SHIGEMITSU. The substance of this plan was to organize
22 a committee, under the jurisdiction of the Prime Minister,
23 consisting not only of members of the Army and Navy
24 Ministries, but of Foreign Ministry officials, and
25 authorities on international law, and to have them study

1 questions concerning war-time international laws and
2 customs, and matters concerning prisoners too. This plan,
3 however, was not brought to a successful end, since the
4 administration of matters relating to prisoners of war
5 was under the jurisdiction of the Army.

6 "7. In addition, Mr. SHIGEMITSU took up the
7 matter of prisoners of war at the Supreme Council for
8 Direction of War in October 1944. At this meeting Foreign
9 Minister SHIGEMITSU pointed out to the members who were
10 present that, according to recent information from enemy
11 sources, it was reported that the Japanese treatment of
12 prisoners of war left much to be desired. He further
13 stated that the humanitarian treatment of prisoners of war
14 had been from old times a virtue of our country, and that
15 this was a matter of importance from the point of view of
16 our international reputation and future relations. As
17 it was a matter for profound regret if by any possible
18 chance we should have committed the slightest possible
19 fault in this matter, he desired that direction should
20 be issued to the responsible persons among the competent
21 authorities, so that the matters might be fully discussed.
22 The Supreme Council for Direction of War was composed of
23 the Prime Minister, the Army and Navy Ministers, the Chiefs
24 of the General Staffs of the Army and Navy and Foreign
25 Minister. Soon after I had heard Mr. SHIGEMITSU repeat

1 to me his statement as mentioned above, I was told by a
2 liaison officer of the Prisoner of War Information Bureau
3 that the same Bureau had dispatched its members to prisoner
4 of war camps, and had instructed responsible officers to
5 be considerate in the treatment of prisoners of war.

6 "8. Foreign Minister SHIGEMITSU sincerely and
7 earnestly worked for the matter of the exchange of
8 nationals resident abroad, as well as for the transport
9 tion and distribution of American and British relief
10 goods by an exchange ship. He was at last successful
11 in executing the second exchange of American and Japanese
12 nationals resident respectively in the other party's
13 territories, in October 1943, at Port Marmagao (Goa).
14 On that occasion, large quantities of Allied relief goods
15 were transported by the exchange ship Teia Maru, and they
16 were distributed among the prisoners of war and civilian
17 internees who were located in places in Japanese hands.
18 Further, when a request was made late in 1943 by the
19 United States Government for the transportation of relief
20 goods from Vladivostok, to which port the United States
21 Government would forward such goods, and for their delivery
22 to prisoners of war in various places, Mr. SHIGEMITSU
23 immediately transmitted that request to the competent
24 authorities, and eagerly urged us, his subordinates, to
25 request such authorities to solve the matter. As the

1 result the American request was granted by the competent
2 authorities, the goods being transported first to Kobe,
3 and th to China, Hong Kong, French Indo-China, Singapore,
4 and other ports.

5 "9. As to permission for visits to prisoner
6 of war camps in occupied territories, Mr. SHIGEMITSU made
7 all possible efforts vis-a-vis the competent authorities.
8 I endeavored long and earnestly, under instructions from
9 Minister SHIGEMITSU, orally as well as by note, to obtain
10 permission from the competent authorities to visit such
11 camps. The military authorities made it a policy not to
12 permit visits to camps in occupied territories, and did
13 not readily comply with our requests. In the meantime,
14 neutral representatives several times eagerly requested
15 for the permission, and the Foreign Ministry continued
16 unceasingly to make such requests to the Army authorities.
17 As a result, in December 1944, they consented at last to
18 permit representatives of the International Committee of
19 the Red Cross to visit the camps in the southern areas."
20 I omit the rest of that sentence since I do not intend to
21 offer these documents.

22 (Reading continued) "10. Mr. TOGO had, like
23 his predecssor, Mr. SHIGEMITSU, deep concern over the
24 problem of prisoners of war, and instructed me to transact
25 such affairs with utmost care, and to endeavor to take

1 advantage of every opportunity for the improvement of the
2 treatment of prisoners of war, from a humanitarian view-
3 point. On my part, I exerted all my efforts in the
4 transaction of this business in conformity with his instruc-
5 tions, in the same manner as at the time of Mr. SHIGEMITSU.

6 "Ever since Mr. TOGO became Foreign Minister for
7 the second time, he had been very busily occupied with
8 various important problems in connection with the situ-
9 ation of the war of those days. Nevertheless he did not
10 fail to pay due attention to the treatment of prisoners
11 of war. For instance, on June 3, 1945 the Swiss Minister
12 handed to Mr. TOGO a protest of the United States Govern-
13 ment concerning atrocities to American prisoners of war
14 at Puerto Princessa on Palawan Island (exhibit No. 2107).
15 Mr. TOGO immediately took steps to have it transmitted
16 to the competent authorities, and at the same time he
17 personally called the special attention of the War
18 Minister ANAMI to the subject, and further urged him to
19 accord fair and generous treatment to prisoners of war
20 in general, to which he got the latter's consent. I was
21 so told by Mr. TOGO at that time.

22 "11. In spite of such attitude of Mr. TOGO's,
23 the war situation became very stringent during the second
24 time of his tenure of office, rendering the management of
25 the questions of prisoners of war increasingly difficult.

1 Toward the spring and summer of 1945, the situation of
2 the Japanese Army on the fronts in the Philippines, Burma
3 and other southern areas deteriorated considerably. As
4 the Allied forces advanced into these districts, the
5 Japanese forces retreated, and fresh protests began to
6 be lodged concerning the treatment accorded by the
7 Japanese Army to the prisoners of war and internees in
8 these regions. The Foreign Ministry transmitted them to
9 the competent authorities without failure. According to
10 the explanations of officials of the War Ministry, however,
11 as a result of the defeats of the Japanese Army, telegraphic
12 communication between the central military authorities and
13 the forces at the front became very difficult and often
14 impossible, and even when such communication was possible,
15 the confusion within the Japanese forces at the front
16 rendered investigations into the matters of prisoners of
17 war almost impossible, and accordingly, in spite of the
18 frequent requests of the Foreign Ministry, the cases
19 increased where we could not receive sufficient answer
20 which would be satisfactory to the Allied countries. In
21 the meantime, the so-called Awa Maru incident of April 1
22 occurred, exciting the military and adversely affecting
23 the solution of the questions of prisoners of war. During
24 the time of Foreign Minister SHIGEMITSU, I very often saw
25 in Tokyo the Ministers of the neutral countries represent-

1 ing the interest of the enemy countries, for liaison
2 business. But at the time of Foreign Minister TOGO these
3 Ministers had evacuated to Karuizawa, and in accordance
4 with Mr. TOGO's instructions, I often took measures of
5 keeping speedy contact with these Ministers by exchanging
6 letters through couriers, or by often proceeding to
7 Karuizawa personally, thus exercising all possible
8 efforts in order to meet the situation by taking recourse
9 to expedient measures in time of emergency. Instances
10 of our answers to the Ministers of the neutral countries
11 by means of personal letters or oral communications,
12 which I utilized for expediency in those days instead of
13 official notes of the Foreign Ministry, may be seen in
14 exhibits 2016-A-71 and 2016-A-72.

15 "In the meantime, the Foreign Ministry received
16 from the military authorities no information whatever
17 concerning the trials of the Allied fliers such as those
18 which took place in the middle of July, 1945 (exhibit 1994.)

19 "12. As for visits to the prisoner of war camps
20 in the occupied areas by the representatives of the
21 International Committee of the Red Cross, as mentioned
22 in Section 9 of this affidavit, Mr. TOGO endeavored to
23 see to its realization without delay, and regardless of
24 the fact that by the beginning of June 1945, the acceptance
25 of the conditions of reciprocity which had been imposed

1 upon permission for such visits had not yet been officially
2 notified to us by all the Governments of the Allied
3 countries concerned, the permission for visits to the
4 camps in Thailand was actually notified to the Swiss
5 Minister on June 5. As for the visits to the camps in
6 Singapore, there arose some questions regarding the
7 status of the visitors and the selection of qualified
8 persons, but I was informed by the military authorities
9 that the visit was actually made on the spot. As far
10 as concerns visits to the camps in Manila, the city had
11 been recaptured by the spring of 1945, and American nationals
12 there liberated (exhibits 2016-A-64, 2016-A-68, 2016-A-69,
13 2016-A-72, 2016-A-73.)"

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THE PRESIDENT: Mr. Chief of Counsel.

MR. KEENAN: If the Court please, this document, I understood, had been served upon all of the IPS section seasonably. I received a copy of it the latter part of the week. I am informed now that the copy was served today on the various members of the International Prosecution Section. I therefore ask permission of this Court to call SUZUKI, the affiant, for cross-examination.

THE PRESIDENT: I think the Tribunal are prepared that he be called, Mr. Chief of Counsel, for cross-examination. The Tribunal think that he should be called if you think he should be cross-examined.

MR. FURNESS: If the Court please, I do wish to state that because of suggestions made I took up the evidence I intended to produce and I understood that this witness was not wanted by the prosecution for cross-examination.

THE PRESIDENT: He is a most important witness and should be cross-examined if the prosecution think they have material on which to cross-examine him.

MR. FURNESS: I am merely making that statement to state why he is not here and I think it is confirmed by the fact that no objection was made when I offered the affidavit.

THE PRESIDENT: Mr. Mattice.

1 MR. MATTICE: On behalf of the accused
2 ITAGAKI, may I inquire of the prosecution whether
3 they desire to cross-examine the witness UGAKI.
4

THE PRESIDENT: Judge Nyi.

5 JUDGE NYI: May it please the Tribunal, we
6 will cross-examine the witness UGAKI.
7

8 MR. MATTICE: We now call the witness UGAKI,
9 Kazushige. He has previously testified at this trial
10 on other matters. His affidavit is defense document
11 No. 3047.

12 The prosecution, if the Tribunal please,
13 introduced exhibit No. 3457, a so-called collection of
14 decisions of Five Ministers Conferences which ITAGAKI,
15 doubtful of its genuineness, could not identify and
16 testified that the statements therein were contrary to
17 the facts or beyond his memory. The witness UGAKI
18 was one of the five ministers at the time in question,
19 was at that time the Foreign Minister, and he will
20 disclose, as far as his memory serves him, what took
21 place at those conferences. He will say that a docu-
22 ment such as exhibit No. 3457 did not originally
23 exist; that no record of any kind was made at the
24 conferences.
25

1 K A Z U S H I G E U G A K I, recalled as a witness
2 on behalf of the defense, having been previously
3 sworn, testified through Japanese interpreters
4 as follows:

5 THE PRESIDENT: You are still on your former
6 oath.

7 DIRECT EXAMINATION

8 BY MR. MATTICE:

9 Q You may give your name to the Tribunal, please.

10 A UGAKI, Kazushige.

11 Q Where do you reside?

12 THE PRESIDENT: We do not want it again. He
13 has been here before.

14 MR. MATTICE: May the witness be shown
15 defense document 3047, please?

16 (Whereupon, a document was handed to
17 the witness.)

18 Q Is that your affidavit, Mr. UGAKI?

19 A Yes.

20 Q Do you wish to note any change or correction
21 in your affidavit?

22 A Will you wait just a moment? No corrections.

23 Q Are the statements in your affidavit true?

24 A Yes.

25 MR. MATTICE: I offer it in evidence, if the

UGAKI

DIRECT

38,803

1 Tribunal please.

2 THE PRESIDENT: Judge Nyi.
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1 JUDGE NYI: The prosecution objects to the
2 introduction of this affidavit. It contains eight
3 paragraphs, the first three of which are merely
4 introductory and will be meaningless if the rest of
5 the document is rejected. I shall, therefore, state
6 my objections to the remaining five paragraphs.

7 Paragraph 4 deals with the nature and proce-
8 dure of the Five Ministers' Conference. ITAGAKI had
9 testified about the same subject matter on pages
10 30,413-30,415 of the transcript. One only need refer
11 to the record. We do not see why it is necessary to
12 introduce a witness at this stage to repeat what is
13 already in the record.

14 Moreover, when the prosecution tendered the
15 document, exhibit 3457, in rebuttal; Mr. Logan, on
16 behalf of KIDO, had already made objection that there
17 was nothing in the document indicating that these
18 decisions had been submitted to, or approved by, the
19 cabinet. Mr. Mattice, on behalf of ITAGAKI, also
20 objected and stated that no minutes were taken at
21 the Five Ministers' Conference. They appear on pages
22 37,346 and 37,349, respectively. These objections
23 were overruled and the document was admitted. We
24 think it will open the door for unnecessary argument
25 if the present witness is allowed to repeat what

1 ITAGAKI and the learned counsel had already stated to
2 this Court but not accepted.

3 With regard to paragraph 5, we did not state
4 to the Court when we tendered the document that the
5 said decisions were based on proposals from the
6 Foreign Office or that the copy we presented was an
7 original copy. The certificate only says that the
8 document is an official document of the Japanese
9 Government and that it is part of the official
10 archives and files of the Foreign Ministry. Therefore,
11 it is pointless for the witness to testify that the
12 document is not a true original unless it bears the
13 witness' signature.

14 Paragraph 6 contains information which is
15 immaterial and superfluous. No one has so far made
16 it an issue whether the Five Ministers' Conference
17 must be attended by all the Five Ministers or not.
18 It is, therefore, a matter of no importance.

19 In paragraph 7, the witness tries to tell
20 the Court that some of the decisions as contained in
21 the document were against his own views and, there-
22 fore, highly improbable. We must point out that
23 one's views are subject to changes. Sometimes one
24 may suppress his own views on considerations of
25 expediency without totally giving up his views. The

1 mere fact that the witness' views were opposed to
2 the decisions as outlined in the document in question
3 does not preclude the possibility that he once joined
4 in making these decisions.

5 The witness stated on page 3 and 4 that
6 item No. 2 and 3 of the decisions were improbable.
7 As to item No. 4, he stated on page 4 that he does
8 not remember and that he cannot think such decisions
9 could have been made. As to item No. 5, he again
10 stated that it was improbable considering his views
11 and ideas at that time. As to item 12, he considered
12 it absurd that such a decision had been made. He is
13 thus relying on reasoning rather than on memory or
14 recollection of facts.

15 Therefore, in our submission, the whole of
16 paragraph 7 is speculative and indefinite. The
17 testimony lacks certainty and, consequently, it does
18 not have probative value.

19 In the 8th paragraph, which is the last para-
20 graph, the witness draws a general conclusion by say-
21 ing that he is inclined to believe that this document
22 was compiled after his resignation by someone based
23 on an opinion of somebody, and that of the caliber
24 of minor clerk and from a rough draft at that. If
25 such testimony is to be accepted, we shall be relying
on guesswork and conjecture to which there can be

no end.

1 Before concluding, I wish to specifically
2 point out that time and again the prosecution had
3 introduced documents containing decisions of the Five
4 Ministers' Conference without objection from the
5 defense. In one instance, Mr. Furness of the defense
6 expressly stated to the Court that he raised no objection
7 when exhibit 978 was tendered in evidence, transcript
8 page 9,548. Other exhibits containing decisions of
9 the Five Ministers' Conference are exhibit 216,
10 decisions made on 7 August, 1936, page 2,727; exhibit
11 979, decisions made 11 August, 1936, page 9,549;
12 exhibit 612, decisions made 25 November, 1938, page
13 6,731. The last mentioned was also participated by
14 ITAGAKI as War Minister in the KONOYE Cabinet. They
15 came from the same source, that is, the Archives
16 Section of the Foreign Ministry. The accuracy and
17 enforceability of the decisions have never been
18 questioned. In our submission, the introduction of
19 this affidavit at this late stage is highly unreason-
20 able and pointless. We, therefore, submit that this
21 document should be rejected in its entirety.

22 THE PRESIDENT: Mr. Mattice, you need not
23 argue anything except paragraphs 4, 6 and 8.

24 MR. MATTICE: I think I am prepared to agree

1 that paragraph 4 in the main is, perhaps, cumulative
2 and repetitious to some extent. However, here is a
3 person, this witness, who was present at these con-
4 ferences. What he says in the early paragraphs,
5 particularly paragraph 4, is preliminary to what he
6 says later on. It is not too important. We feel
7 inclined to at least argue that what we offer here
8 is matter which measures up as high, if not higher,
9 than the so-called record of the decisions of the
10 Five Ministers' Conferences, the exhibit referred to.

11 Objection was made to the introduction of
12 these excerpts from the so-called memoirs time after
13 time. It may be, as Judge Nyi says, there may have
14 been an instance where no objection was made. An
15 objection was made to the introduction of these
16 alleged records of Five Ministers' Conferences. An
17 objection should have been made to them. And we
18 think they should not have been admitted because they
19 are simon-pure hearsay and second and third degree
20 hearsay at that.

21 THE PRESIDENT: You had better continue
22 arguing after recess. Have you much more to say?

23 MR. LATTICE: Nothing much more to say.

24 THE PRESIDENT: By a majority, the objections
25 are overruled except as to paragraphs 4, 6 and 8. The

1 remainder of the document is admitted on the usual
2 terms.

3 CLERK OF THE COURT: Defense document 3047
4 will receive exhibit No. 3899.

5 (Whereupon, the document above
6 referred to was marked defense exhibit
7 No. 3899 and received in evidence.)

8 THE PRESIDENT: We will recess until half-
9 past one.

10 (Whereupon, at 1200, a recess
11 was taken.)

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: With the Tribunal's permission
the accused KAYA will be absent from the courtroom the
whole of the afternoon session conferring with his
counsel.

Mr. Mattice.

- - -

K A Z U S H I G E U G A K I, called as a witness
on behalf of the defense, resumed the stand and
testified through Japanese interpreters as follows:

MR. MATTICE: Exhibit 3899, omitting the parts
indicated and the formal parts, reads as follows:

"I was Foreign Minister in the 1st KONOYE
Cabinet during the period from the end of May, 1938
until the end of September of the same year. General
ITAGAKI, Seishiro became War Minister early in June,
1938 and remained in office after I resigned the Foreign
Minister.

"I was read the alleged 'Collection of Decisions
at the Five-Minister Conference' from Court exhibit
No. 3457 (prosecution document No. 2,570-B) by the

Japanese Defense Attorney for defendant ITAGAKI.

1 "At times proposals were submitted to the
2 Five-Minister Conference in written form. On such
3 occasions, in respect of whose proposals which had some
4 relation or other to the national policy, I used to
5 sign the documents and hand them over to my subordinates.
6 Therefore, if any documents are held at the Foreign
7 Office they are not true originals unless they bear
8 my signature.
9

10 "To return to exhibit No. 3457 which is men-
11 tioned above, and to speak on the alleged 'Measures
12 to be taken in case of Surrender of the Present Central
13 Government of China,' as described in this document
14 under item No. 2 (decided on July 8, 1938 at the Five-
15 Ministers' Conference), such a decision was highly
16 improbable. Most conspicuous in which was the retire-
17 ment of Chiang Kai-shek from public life as mentioned
18 as the fourth condition of the surrender of the present
19 Chinese central government in item No. 3. When I
20 accepted the post of cabinet minister, I asked Premier
21 KONOYE to cancel the KONOYE statement declared on
22 January 16, 1938 when the occasion required and made
23 this a condition in the acceptance of my post. Premier
24 KONOYE willingly accepted this condition, saying that it
25 was all right to cancel it. Therefore, there was no

1 reason for me to take up the question of Chiang Kai-
2 shek's retirement from public life on July 8 of the same
3 year not long after I entered the cabinet. It was
4 indeed absolutely an improbable thing.

5 "Next, with regard to the alleged 'Strategy
6 toward China in Conformity with the Current situation'
7 under item No. 4 (the decision of the Five-Ministers'
8 Conference on July 1938). I do not remember that I
9 ever made such a decision. As for the item where I
10 was to have the Chinese Central Government ruin itself
11 financially by means of acquiring Chinese funds abroad,
12 etc., I am at a loss as to what it even means. In
13 view of the attendance of the Finance Minister, I cannot
14 think that such a decision could have ever been made.

15 "As for the alleged 'Policy to guide the
16 Establishment of a New Central Government of China'
17 under item No. 5 (decided on July 15, 1938 at the Five-
18 Ministers' Conference), I believe that it was improbable
19 considering my ideas at that time. I never thought of
20 the establishment of a new central government at that
21 time. I devoted myself to the solution of the affair
22 by establishing a Hankow government (Chiang Kai-shek's
23 regime) and negotiating with this government. Hence I
24 had no reason to consent to such a decision and I should
25 have strongly opposed such a proposal if there were any.

1 And if there were any such proposal or decision, I would
2 have remembered it, and since it is not in my memory,
3 I am sure that such a question was not taken up at all
4 at that time.

5 "With regard to the alleged Special Commission
6 on Chinese Affairs (decided on July 26, 1938) under
7 item No. 12, neither a committee like that was ever
8 instituted nor any decision made by the Five-Minister
9 Conference. Particularly in view of the fact that the
10 Five-Minister Conference is not a legislative organ
11 or anything else, and it is absurd that an executive
12 organ would be created under the jurisdiction of the
13 Five-Ministers' Conference.

14 "As to the alleged 'Outline for the Estab-
15 lishment of the Joint Committee' (decided on September
16 9, 1938 at the Five-Ministers' Conference) under item
17 No. 15, as I have already mentioned above, since I had
18 no idea of establishing a central government and as I
19 was of the opinion that we should carry out our national
20 policy by respecting the Chiang Kai-shek government,
21 there is no reason for having discussed such a matter
22 as this."
23

24 You may cross-examine.

25 THE PRESIDENT: Judge Nyi.

CROSS-EXAMINATION

1 BY JUDGE NYI:

2 Q Mr. Witness, when was the Five Ministers'
3 Conference first instituted?
4

5 A Well, probably sometime in June, 1938 but
6 I do not have any exact recollection.

7 Q You mean to say that before that time there was
8 no such thing as Five Ministers' Conference?

9 A That is what I mean.

10 Q Are you aware of the fact that several Five
11 Ministers' Conferences were held in 1936?

12 A I do not think there was anything of the kind
13 in 1936.

14 Q If I should confront you with those court
15 exhibits which contain decisions of the Five Ministers'
16 Conference of 1936 are you going to answer me in a
17 different way?

18 A The situation is exactly as I have set forth
19 in my affidavit.
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1 Q Now, in paragraph 5 of your affidavit you
2 suggested that when proposals were submitted to the
3 Five Ministers' Conference in written form, documents
4 would bear your signature if the proposal had some rela-
5 tion to the national policy, and otherwise it is not a
6 true original, is that your position?

7 A Yes, you are right.

8 Q Now, my question is: When such a proposal came
9 from a ministry other than your own and was approved by
10 the Five Ministers' Conference, was it a usual practice
11 that the bureaus or sections concerned in your ministry
12 would have to read and study it very carefully?

13 A Not study; but anything decided upon by the
14 Five Ministers' Conference, or by the Cabinet, carried
15 into effect if they related to foreign relations.

16 Q Did you say that they are not going to study
17 it?
18

19 A There is no room for study after a decision is
20 once made, the only procedure left is to carry it into
21 effect or to find means of carrying the decision into
22 effect.

23 Q Now, in that case it at least required reading
24 of it. Would you agree with me?

25 A Well, no doubt they did.

 Q Then in such a case was it the natural

1 consequence or effect that it would require printing
2 and distribution of the document, and merely one copy of
3 the original wouldn't be sufficient for the purpose,
4 would it?

5 A There were no occasions in which copies were
6 made, and if there were it would have been a very rare
7 case. There might have been such a case, but, if so,
8 it was a very rare one.

9 Q All right. Then in such a case you wouldn't
10 be surprised if you were shown any document containing
11 a decision of the Five Ministers' Conference although
12 it doesn't bear your signature, would you?

13 A No, I am not particularly surprised.

14 Q In your affidavit on page 4 you mention the
15 KONOYE statement of 16 January 1938. You said that you
16 made it a condition for your acceptance of the Foreign
17 Ministership that this statement would be retracted or
18 cancelled when the occasion required.

19 A Yes.

20 Q Was it ever cancelled or retracted, do you
21 know?

22 A The condition was that it was to be retracted
23 or cancelled if necessary, and such a necessity did not
24 arise during my tenure of office.

25 Q Did you ever remind KONOYE why he delayed the

promised cancellation?

1 A No. That cancellation was not delayed; it
2 was up to me to decide when it was to be cancelled.

3 Q Now, you stated just a minute ago that the
4 necessity of cancelling it did not arise. Now, what
5 do you mean by "necessity?"

6 A Well, when peace negotiations were formally
7 under way, and depending upon the progress of peace
8 negotiations the situation might have arisen in which
9 the statement need be cancelled, and at the same time
10 the condition for such cancellation might not have
11 arisen.
12

13 Q Well, was it not the policy of the Japanese
14 Government that they were not to deal with the Chiang
15 Kai-shek Government ever since the 16th of January
16 1938?

17 A Well, when I became Foreign Minister that was
18 already just a policy in name only. In other words,
19 that the name not to deal with the Chiang regime merely
20 existed as words. But actually that was not the case
21 because informal or private talks were already under way
22 between our side and the Chinese regime then at Hankow.

23 Q Do you suggest that the Foreign Ministry, of
24 which you were the head, was handling the negotiations
25 with the Hankow Government?

1 A Yes.

2 Q Through what channels?

3 A There was a Japanese Consulate General in
4 Hongkong, and the Hankow Government sent its emissaries
5 to Hongkong, and all telegrams, the exchange of tele-
6 grams ingoing and outgoing were conducted from that spot.

7 Q Were the negotiations progressing very favor-
8 ably at that time?

9 A Well, at that stage we were just exchanging
10 views, and I cannot say that the negotiations were pro-
11 gressing favorably at that time. But in my estimation
12 the prospects at that time, as I saw them, were favor-
13 able.

14 Q The fact was that you were planning the campaign
15 of Hankow and Canton, was that right? And such campaign
16 was aimed at the destruction of the Chinese Central
17 Government, was it not?

18 A No, such was not the case at all. The High
19 Command, of course, was moving troops.

20 Q Do you remember when Canton and Hankow fell
21 to the Japanese troops?

22 A In my recollection the fall took place after
23 my resignation.

24 Q Were the campaigns at Hankow and Canton planned
25 long before your resignation?

1 A Well, you will have to ask the High Command
2 that question.

3 Q How far is Nanking from Hankow?

4 A I have never measured the distance before.

5 Q And it took about more than ten months for
6 the Japanese troops to reach from Nanking to Hankow,
7 was it right?

8 A I do not know.

9 Q Do you suggest that the Japanese troops can
10 reach Hankow from Nanking all at once without any pre-
11 paration?

12 A I think that is a matter of common sense.

13 Q Now, on page 5, the middle of the first para-
14 graph of your English affidavit, you say that "I
15 devoted myself to the solution of the affair by estab-
16 lishing a Hankow Government (Chiang Kai-shek's regime)
17 and negotiating with this government." Now, what do
18 you mean by "establishing a Hankow Government?"

19 A To respect the dignity and prestige of the
20 Hankow Government.

21 THE PRESIDENT: What does the Japanese original
22 say? We refer that to the Language Section.

23 JUDGE NYI: Shall I go on?

24 THE PRESIDENT: Yes.

25 Q Mr. Witness, what was the purpose of the

campaign of Hankow and Canton?

1 A Will you please ask that question to the
2 High Command.

3 Q Do you mean that as the Foreign Minister you
4 were never at all concerned, or approached for dis-
5 cussion, or participated in any discussion about it?

6 A I have been consulted on matters of national
7 policy. But any matters which were within the juris-
8 diction of the High Command I had absolutely no connec-
9 tion as Foreign Minister.

10 Q This is a matter of national policy, isn't it,
11 whether the Canton Government should be the office of
12 your negotiations, or whether it should be destroyed?
13 Do you agree with me?

14 A May I have it repeated?

15 (Whereupon, the Japanese court
16 reported read.)

17 A It is a question of national policy. But
18 diplomacy and military operations must progress hand
19 in hand in coordination one with the other. This is
20 the established rule for the prosecution of any war.
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1 Q But did the campaign have to coordinate
2 with your foreign policy?

3 A Your question was directed to the objective
4 of the operation, and that is why I replied to you
5 that I had no connections with such matters.

6 Q No, my question is aimed at both.

7 Now, suppose there is a situation like this:
8 You are negotiating with the Hankow Government, and
9 the High Command is trying to destroy the Hankow
10 Government. If there had been no discussion between
11 the two, what would the situation be?

12 A Of course consultations would have been
13 held on such matters.

14 Q Now, you stated in your affidavit that you
15 had never participated in any -- that any decision
16 with regard to the establishment of a new Central
17 Government or the joint committee was highly im-
18 probable?

19 A Yes.

20 Q Now, you made no mistake about that?

21 A No mistake.

22 JUDGE NYI: May the witness be shown
23 exhibit 269?
24

25 (Whereupon, a document was
handed to the witness.)

1 Q Mr. Witness, do you see in this exhibit a
2 report made by you to the Emperor?

3 A Will you wait a moment? What do you wish
4 to ask me about this?

5 Q I wish to read you part of this document
6 which contains your report to the Emperor. In the
7 middle of the first paragraph of the English version
8 you stated to the Emperor:

9 "I had also explained minutely that if
10 Britain, from a higher point of view, should be more
11 friendly and conciliatory toward Japan, and abandon
12 her policy to support Chiang Kai-shek, the relations
13 between the two countries would be greatly improved."

14 Have you found that, Witness?

15 A Yes.

16 JUDGE NYI: This appears on 3585 of the
17 transcript.

18 Q Now, let me read to you another current
19 passage in this document. It appears on page 3588
20 and following in the transcript. On the document
21 itself, I am reading from No. 3 on page 2 of the
22 document, beginning with the 6th line from the bottom:

23 "The establishment of the Federated Committee
24 of the Government of the Republic of China:

25 "Since the establishment of the Chinese

1 Interim Government in December last year, and the
2 Revolutionary Government in March this year, these
3 two regimes have been separated in the north and in
4 the south, and there had been no organ to link their
5 controls.

6 "They have been working from their re-
7 spective standpoints to hastily organize their
8 administration, finance and public peace, etc.
9 Japan will further proceed with her effort in the
10 destruction of the Chiang Kai-shek Regime, while
11 contemplating carefully the establishment of a new
12 Chinese Central Government in its place. As a
13 premise for the establishment of a new Chinese Central
14 Government, Japan has decided to immediately establish
15 a Federated Committee with the cooperations of both
16 the Interim Government and the Revolutionary Govern-
17 ment and including the Mongolia-Sinkiang Federated
18 Committee."

19 Now the so-called Federated Committee is
20 just another translation of the word "Joint Committee,"
21 which appears as No. 15 of exhibit 3457. There can
22 be no dispute that the establishment of the Central
23 Chinese Government was at that time being contem-
24 plated,
25

Now, Mr. Witness, do you recognize that this

1 is the report which you made to the Emperor?

2 A No, I do not.

3 Q You do not.

4 A Should I state the reason?

5 Q I don't want your reason. I just want to
6 know whether this is a correct copy of the report
7 that you made to the Emperor. In this connection
8 will you please examine into this document, which
9 is a document from the Archives Section of the Foreign
10 Ministry, and it also bears the chop of the official
11 who was supposed to be in charge. I think MATSUMURA
12 was the name. Is there any mistake about its source
13 and authenticity?

14 A Yes, very much.

15 Q All right.

16 A Shall I state it?

17 As it states, this consisted of materials
18 for a private report. They contained raw materials
19 to supply my mind with ideas on the basis of which I
20 was to make a report to the Throne. So this is not
21 the report that was made to the Throne, and I state
22 that this document contains the opinions of the First
23 Section which drew up this document as its opinions
24 and as its desires as being the views which that
25 section wanted conveyed to the Throne. The contents

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1 of this document do not represent my opinions, and
2 consequently they were not the opinions I reported to
3 the Throne.
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1 Q Now, you say this is the opinion drawn by the
2 chief of the First Section, was that right?

3 A Yes. This document represents only the views
4 of this particular section, and submitted to me -- and
5 submitted to the Foreign Minister. If I did give this
6 report, I naturally would have -- These were views
7 submitted by this section to the minister, and the minis-
8 ter naturally would select appropriate material out of
9 this particular document for preparing a report to
10 the Throne.

11 But, as a matter of fact, I do not remember
12 now, at this date, whether a report of this nature was
13 actually made to the Throne.

14 Q Now, what did that section take charge of?
15 Was that the East Asiatic Bureau?

16 A I think it was a section in the East Asiatic
17 Affairs Bureau, the Foreign Office, which was in charge
18 of China affairs.

19 Q Did that section know that negotiations were
20 being carried on between you -- between the Foreign
21 Ministry and the Hankow Government through the officials
22 at Hong Kong?

23 A Being merely preliminary talks, the section
24 was not informed.

25 Q This section prepared the matters for your

1 report to the Emperor. You -- now, I haven't given
2 you the question yet.

3 Now, you wouldn't find that a section which
4 was supposed to take charge of East Asiatic Affairs
5 would prepare a report containing views which are con-
6 trary: in fact, contradictory and very much opposed
7 to your views, would you?

8 A There is no contradictions whatsoever. But
9 in view of the possibility that if our subordinates were
10 informed such information might leak out as to what we
11 were contemplating or thinking about, it was only after
12 preliminary arrangements had been completed and formal
13 steps were to be taken that these subordinates were
14 informed, for it was from that point that the work of
15 our subordinates began.

16 THE MONITOR: Slight correction: Because
17 of possibility of premature leakage.

18 Q You do realize that a report to the Throne
19 is a very important, serious thing? It is not a dis-
20 cussion at random, or over teacups, is that right?

21 A Yes, more than enough.

22 Q Now, Mr. Witness, when you were Minister of
23 Foreign Affairs, have you ever talked to the War
24 Minister, ITAGAKI, on the proposed campaign of Canton
25 and Hankow?

A I never talked with him about operations.

1 Q Well, operations, as you have stated, is a
2 matter for the General Command. Have you talked to
3 him anything about the campaign in connection with
4 other things which properly belong to the sphere of
5 the War Ministry?
6

A I think so, but I have no recollection now.

7 Q Can you recollect what his views are or what
8 the contents of your talk with him are?
9

10 A I think our views were generally agreed, and
11 I have no recollection in detail. If there was any
12 divergence of views between us, then I might recall
13 something; but in view of the fact that I have no recol-
14 lection whatsoever, I believe that our views were
15 generally the same.

16 Q Now, do you know that on the 16th of August
17 1938, a cabinet meeting was held in which some of the
18 Five Ministers' Conference decisions were adopted at
19 that time?
20

A I have no recollection.

21 JUDGE NYI: May the witness be shown IPS
22 document 1658-C.
23

24 THE PRESIDENT: If he is contradicted by
25 documents already in evidence, perhaps you will be
satisfied to use the material on your summation.

1 JUDGE NYI: Your Honor, I shall just give
2 him a chance to identify it.

3 Q Are these the decisions which were adopted
4 at the cabinet meeting of 16 August 1938?

5 A I can't find the date, August 16, on this
6 document.

7 I have no recollection of anything of this
8 kind.

9 Q Now, do you see in this document that six of
10 the Five Ministers' Conference decisions were adopted
11 by the cabinet meeting of 16 August 1938?

12 A I have seen the document, but I have no
13 recollection of anything of this kind.

14 Q Do you remember, if I may refresh your mind,
15 that in this meeting you, as the Foreign Minister,
16 made a report on the Five Ministers' Conference?

17 A I have no recollection.

18 Q Let me refresh you further. It was a conti-
19 nuation of the previous meeting, as recorded in KIDO's
20 diary of August 16, 1938.

21 A Whether there might be such an item in KIDO's
22 diary, I can only say that KIDO had nothing to do
23 with, and did not attend, this meeting of the Five
24 Ministers' Conference.
25

THE MONITOR: "Did not attend" should be stricke

1 Q Now, my question is like this: It was the
2 continuation of the cabinet -- previous cabinet
3 meeting as recorded in KIDO's diary and he, KIDO,
4 was recording the cabinet meeting, not the Five
5 Ministers Conferences.

6 A Under the Japanese system, the Lord Keeper of
7 the Privy Seal has no relations or no connections
8 with the cabinet -- cabinet meeting.

9 Q Now, do you recall that there are occasions
10 where the Five Ministers Conference decisions were
11 refuted by the cabinet meeting?

12 A Perhaps, although rarely, there might have
13 been such a case, but I do not recall anything specifi-
14 cally now.

15 Q All right. Now, Mr. Witness, may I ask you
16 what your present age is?

17 A 81 by Japanese reckoning.

18 BY JUDGE NYI: Thank you very much. This
19 concludes my cross-examination.

20 THE PRESIDENT: Captain Kraft.

21 LANGUAGE ARBITER (Captain Kraft): If the
22 Tribunal please, the following language correction is
23 submitted: Exhibit No. 399, defense document 3047,
24 revised, page 5, line 8, delete "establishing" and
25 substitute "supporting."

1 THE PRESIDENT: Thank you, Captain Kraft.

2 Mr. Mattice.

3 MR. MATTICE: May the witness be excused on
4 the usual terms?

5 THE PRESIDENT: He is excused accordingly.

6 (Whereupon, the witness was excused.)

7 - - -

8 MR. MATTICE: We offer now, if the Tribunal
9 please, defense document No. 3519, which is the
10 affidavit of the witness USAMI, Okie.

11 The prosecution has introduced excerpts from
12 the HARADA-SAIONJI Memoirs. Among these is Exhibit
13 No. 3795-A tending to prove that with regard to the
14 Japanese, German and Italian negotiation for the
15 purpose of strengthening the Anti-Comintern Pact,
16 the Emperor ordered and allowed the Chief Aide-de-Camp
17 to convey to General Staff Headquarters the Imperial
18 wish that the Anti-Comintern Pact be applied to Soviet
19 Russia only. ITAGAKI denied this. This witness was
20 the aide-de-camp at the time stated and will tell
21 this Tribunal that he has no recollection of being
22 sent on such a mission.

23 The prosecution, with exhibit No. 3798-A,
24 sought to establish that the Emperor reprimanded
25 ITAGAKI around April 10, 1939, on the subject of an

1 allegation that ITAGAKI had, to some extent, shielded
2 SHIRATORI and OSHIMA, who were alleged to have been
3 acting contrary to instructions of the central
4 authorities. This witness will state that the Emperor
5 did not reprimand ITAGAKI. This witness was the only
6 person present besides the Emperor and General ITAGAKI
7 and his evidence is, therefore, important and of
8 probative value.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 3019
11 will receive exhibit No. 3900.

12 JUDGE NYI: May it please your Honor, I
13 thought the witness was not yet on the stand. I
14 thought the defense was going to introduce it after
15 he comes in. I want to state my objections to this.

16 THE PRESIDENT: Well, if you want the witness
17 cross-examined.

18 JUDGE NYI: No, we are not going to cross-
19 examine. We want to state our objections.
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1 THE PRESIDENT: I waited for you to do so, and
2 you didn't. I assumed there was to be no objection.

3 In the future, I will have to ask specifically,
4 "Is there any objection?" I have not been doing that
5 regularly. There have been so many belated objections
6 lately that I have adopted the practice of asking whether
7 there is any objection.

8 State your objection.

9 JUDGE NYI: Thank you.

10 The prosecution objects to the introduction of
11 this affidavit on the ground that it is immaterial and
12 that it does not have probative value. The witness
13 stated in his affidavit that after report was made to
14 the Emperor by a minister of the Cabinet, the Chief Aide-
15 de-Camp often retired from the scene leaving the two
16 alone. Therefore, the witness would not be present when
17 conversation took place afterwards.

18 In paragraph 4, the witness only stated that he
19 did not remember that he went to General Staff Head-
20 quarters to convey a message. This is far from being
21 certain and definite.

22 In paragraph 5, he again stated that he cannot
23 recollect whether ITAGAKI made a report to the Throne on
24 or about the 10th of April, 1939. Again he was indef-
25 inite. Moreover, the date he refers to did not coincide

1 with the date which appeared on exhibit 3798. The date
2 which appeared in that exhibit is the 18th of April,
3 1938. There is a whole lot of difference between these
4 two dates.

5 We therefore submit that the present document
6 should be rejected.

7 THE PRESIDENT: Mr. Mattice, are you going to
8 try to support this?

9 MR. MATTICE: Yes, your Honor.

10 With respect to paragraph 3, take Judge Nyi's
11 objections thereto. At least it does show, with respect
12 to the time, the witness was present, and that was the
13 time, that was the important time. I submit that that
14 was the important time. That was when General ITAGAKI
15 was making his report to the Emperor and when, if any
16 such comment on the Emperor's part had been made at all,
17 it most likely would have been made at that time.

18 More than that, the period during which this
19 witness says he retired was the social period, apparentl
20 which sometimes occurred after the person who had an
21 audience with the Emperor had completed his business and
22 the Emperor invited him to remain. So it seems to me
23 that prosecution's objection so far as this paragraph is
24 concerned is not very well taken. It should be recalled
25 also that this witness was the only person on earth who

1 was present at such occasions.

2 That is all.

3 THE PRESIDENT: By a majority the objection is
4 sustained and the document rejected. Each Member who
5 rejects the document says it has no probative value.

6 MR. MATTICE: That concludes the rebuttal on
7 behalf of this accused, if the Tribunal please.

8 THE PRESIDENT: It is nearly a quarter to three.
9 We will recess for fifteen minutes.

10 (Whereupon, at 1445, a recess was
11 taken until 1500, after which the proceed-
12 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: May it please your Honors, in
5 presenting the surrebuttal evidence on behalf of General
6 TOGO, I shall temporarily defer the first document on
7 the list and I shall first call as a witness HOGEN,
8 Shinsaku, whose affidavit is defense document 3070. He
9 is being called because I wish to ask him one additional
10 question to supply a matter omitted in the drafting of
11 his affidavit. I will continue to state the purposes
12 of his testimony. The purposes of this testimony are:

13 To show that the last four paragraphs of the
14 prosecution's exhibit No. 3835 do not record a part of
15 the conversation between Foreign Minister TOGO and
16 Ambassador Ott of 27 October, thereby rebutting any
17 presumption which might be founded on the document that
18 the dispatch of KURUSU was discussed in October,

19 To refute, by the additional question which I
20 wish to be permitted to put to the witness, the allegation,
21 contended by the prosecution to be sustained by exhibit
22 No. 3835, that the initiative in the matter of abrogation
23 of the secret clause of the Anti-Comintern Pact came from
24 the German side,
25

HOGEN

DIRECT

38,837

1 SHINSAKU HOGEN, called as a witness in
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:-

5 DIRECT EXAMINATION

6 BY MR. BLAKENEY:

7 Q Please state your name.

8 A HOGEN, Shinsaku. My age, 39.

9 MR. BLAKENEY: Let him be shown defense document
10 No. 3070, please.

11 (Whereupon, a document was shown
12 to the witness.

13 Q Please examine this document, Mr. Witness, and
14 state whether it is your affidavit, duly executed by you.

15 A This is the document prepared by me.

16 Q And are the contents thereof true and correct?

17 A Yes.

18 MR. BLAKENEY: I offer in evidence the affidavit,
19 defense document No. 3070.

20 THE PRESIDENT: No objection. Admitted on the
21 usual terms.

22 CLERK OF THE COURT: Defense document 3070 will
23 receive exhibit No. 3900.

24 (Whereupon, the document above referred
25 to was marked defense exhibit No. 3900 and received

1 in evidence.)

2 MR. BLAKENEY: I read the exhibit which,
3 omitting the formal parts, is as follows:

4 "1. In 1941 I was assigned to the Second
5 Section of the European-Asiatic Bureau, and served as a
6 secretary of the Foreign Ministry, acting as interpreter
7 of all conversations between Foreign Minister TOGO and
8 German Ambassador Ott during October and November 1941."

9 In this next paragraph there is one correction.

10 (Reading continued) "2. Memoranda of the
11 conversations referred to in the preceding paragraph
12 were prepared by me immediately after each conversation,
13 and after being (in some cases) submitted to the Foreign
14 Minister for his corrections, were recopied in form for
15 filing. I do not now, of course, remember the details
16 of each conversation, but I do retain the memory of the
17 general outlines thereof.

18 "3. I have been shown Exhibit 3835, purport-
19 ing to be a record from the Foreign Ministry files of
20 the conversation between the Foreign Minister and the
21 Ambassador of 27 October 1941. This memorandum is not
22 in my handwriting, but the contents of the first 7 pages
23 (in the Japanese copy -- through the second paragraph of
24 page 4 of the English) conform to my memory of the con-
25 versation, which I interpreted. The last page, however,

1 dealing with the dispatch of Ambassador KURUSU to
2 Washington, contains matters not discussed at that time.
3 The first knowledge which I had of the dispatch of
4 Ambassador KURUSU was after his departure from Tokyo
5 on 5 November, having never heard of the matter before,
6 either at a conversation with Ott or elsewhere. I
7 remember that the matter was discussed between the
8 Foreign Minister and Ambassador Ott, who had asked for
9 an interview, on the following day -- that is, 6 November --
10 as is shown by the Ambassador's report, defense document
11 3053, which I have been shown and identify as a correct
12 report of the general subjects discussed at that time,
13 though incorrect in particulars. The last page of
14 exhibit 3835 is a page of the Foreign Ministry memorandum
15 of this conversation."

16 By leave of the Tribunal, I have one question
17 additionally.

18 Q Mr. Witness, at the conversation which purports
19 to be recorded in exhibit 3835, was any suggestion of
20 abrogating the secret clause of the Anti-Comintern Pact
21 made by Ambassador Ott?

22 A There was no suggestion ever made.

23 MR. BLAKENEY: May the witness be excused?

24 THE PRESIDENT: He is excused accordingly, on
25 the usual terms.

(Whereupon, the witness was excused.)

1 MR. BLAKENEY: I offer in evidence defense
2 document 3053, the telegram of Ambassador Ott, identified
3 by the witness HOGEN, as evidence that the question of
4 the dispatch of Ambassador KURUSU had not, as is suggested
5 by exhibit 3835, been discussed with Ambassador Ott
6 prior to 6 November 1941.
7

8 THE PRESIDENT: No objection. Admitted on the
9 usual terms.

10 CLERK OF THE COURT: Defense document 3053 will
11 receive exhibit No. 3901.

12 (Whereupon, the document above
13 referred to was marked defense exhibit No.
14 3901, and received in evidence.)
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1 MR. BLAKENEY: I shall read only two brief
2 excerpts from the exhibit, the first at the beginning:

3 "Tokyo, 6 November 1941, 10:50 P. M.

4 "Arrived, 7 November 1941, 17:50 o'clock.

5 "Most Urgent!

6 "Secret!

7 "Foreign Minister TOGO, to whom I have spoken
8 about the sudden dispatch of Ambassador KURUSU to
9 Washington, explained to me that Ambassador Admiral
10 NOMURA had asked for the dispatch of an experienced
11 professional diplomat to support him in the present
12 difficult situation"; and I omit from there to the
13 beginning of paragraph 3, of which I shall read the
14 first sentence:

15 "The dispatching of KURUSU has been decided
16 only recently, as I learned confidentially and as is
17 proved also by his overhasty departure."

18 That is all I wish to read at this time.

19 Next I offer in evidence defense document
20 3069, the affidavit of NISHI Heruhiko, to rebut the
21 evidence of the prosecution alleged to establish that
22 Proposals A and B were final and left no room for
23 further concession, and specifically exhibits 3836,
24 transcript page 38,070, and 3837, transcript 38,073,
25 stated at the time they were tendered to have that
effect, transcript 38,069, 38,061.

1 THE PRESIDENT: Mr. Chief of Counsel.

2 MR. KEENAN: If the Court please, the prose-
3 cution objects to this affidavit on the ground that
4 not alone is it improper to be received at this stage
5 of the trial, but it is not competent evidence at any
6 stage of the trial. This is an attempt to substitute
7 the views of this witness and his interpretation of
8 documents for that of the Court.

9 Reference is made at page 1, in the middle of
10 the third paragraph, to "simplified explanations of the
11 state of current business for the information of the
12 diplomatic service at large." This casual language
13 is applied to an exhibit that is dated 25 November
14 1941, at about the very day the Japanese war fleet was
15 leaving for its attack upon Pearl Harbor. It is an
16 attempt, the prosecution respectfully contends, to edu-
17 cate this learned Tribunal on the meaning of diplomatic
18 language.

19
20 In the third paragraph, about on the second
21 page of the English version, is an attempt on the part
22 of this witness to give testimony that the language
23 used, "final proposal," does not mean what it says; it
24 means something different, although the witness does not
25 see fit to give his explanation of just what the lang-
uage does mean.

1 We respectfully contend, if the Court please,
2 that the evidence introduced in this case, of which
3 there is a great sufficiency, we claim, shows very well
4 whether or not there was a final proposal submitted to
5 the United States of America in the month of November,
6 1941, by the Japanese authorities. We believe that the
7 evidence with reference to that issue, if it is one,
8 has been fully presented by the prosecution and that
9 the accused have had full opportunity to meet it, and
10 it cannot be changed by this witness's interpretation,
11 any more than it can be by the interpretation of lang-
12 uage given by any accused in this dock at any time.

13 Since therefore, Mr. President, we hold that
14 this affidavit or testimony from the witness is plain-
15 ly intended to invade one of the most important provinces
16 of the Court, the prosecution emphatically voices its
17 protest, and objects to its introduction.

18 THE PRESIDENT: Mr. Blakeney.

19 MR. BLAKENEY: In answering this objection
20 I should like call to the Tribunal's attention the fact
21 that, unless I am quite mistaken, there is nothing in
22 this affidavit which approaches a conclusion or an
23 opinion or, as Mr. Chief of Counsel says, an interpre-
24 tation by the witness, but on the contrary, the affi-
25 davit is strictly and completely factual. This witness

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1 in no instance professes to give the meaning of any
2 language and certainly not, as alleged, contends that
3 the language means other than what it says.

4 THE PRESIDENT: What does it do, Major
5 Blakeney?

6 MR. BLAKENEY: On the contrary, this witness
7 undertakes to state in a factual way instances of the
8 practice of the Foreign Ministry in sending instructions
9 of this type, from which the Tribunal can draw the con-
10 clusion which may be that I insist for or may be that
11 the prosecution contends for.

12 THE PRESIDENT: What scope is there for ex-
13 pert knowledge in these matters? Hitherto we have
14 refused to treat diplomats as experts. We have looked
15 at their language and said it is for us to say what it
16 means, what effect to give to it, and this is one of
17 those times.

18 MR. BLAKENEY: I would submit, your Honor,
19 that the Tribunal can be assisted in determining the
20 meaning of language by having knowledge of the course
21 of dealing, the course of conduct, and the practice
22 of those who have used this language at this time and
23 in the past as well.

24 THE PRESIDENT: In negotiations between coun-
25 tries we must hold these diplomats and others to their

own language.

1 MR. BLAKENEY: Your Honor, possibly I haven't
2 made it clear that we are not dealing with the language
3 of Japan to another country; we are dealing with the
4 language of the Japanese Foreign Ministry to its own
5 agents.

6 THE PRESIDENT: That about the effect on the
7 other side? Does it not matter?

8 MR. BLAKENEY: The evidence which this is
9 being offered to rebut, your Honors, was not itself
10 offered in connection with the effect on the other side
11 but as proof of the state of mind of the defendant
12 responsible for sending out that language.

13 THE PRESIDENT: There is only one way to
14 read his mind, that is, by his language and by his con-
15 duct. Here we have his language.

16 MR. BLAKENEY: If I may say one more word:
17 I would suggest what I believe to be an analogy to
18 this case. If your Honors were called upon to con-
19 strue the terms of a contract or negotiations between
20 stockbrokers, you couldn't hope to understand their
21 language unless you knew the practice of the stock
22 exchange.
23

24 THE PRESIDENT: TOGO must be taken to have
25 known the effect of the language he used or which he
authorized to be used on the other side in the negotiations.

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1 MR. BLAKENEY: Of course, because he knew
2 the diplomatic practice, your Honor.

3 THE PRESIDENT: This rests on my vote; there-
4 fore I have taken care of it. By a majority the
5 objection is sustained and the document rejected.

6 MR. BLAKENEY: Lastly, I tender for identifi-
7 cation the Foreign Ministry Treaty Bureau's "Report
8 of Activities" for the year 1941 and offer in evidence
9 an excerpt therefrom, defense document 3039. This
10 document is offered to rebut any possible inference
11 contained in prosecution exhibit No. 3835, transcript
12 pages 38,065, et sequentia that the abrogation of the
13 secret agreement of the Anti-Comintern Pact was
14 brought about through German initiative, as alleged
15 by the prosecutor at transcript page 38,061.

16 THE PRESIDENT: Any objection?

17 Admitted on the usual terms.

18 CLERK OF THE COURT: The book entitled
19 "Report of Activities for the Year 1941," printed in
20 Japanese, will receive exhibit No. 3902 for identifi-
21 cation only and the excerpt therefrom, bearing defense
22 document No. 3039 will receive exhibit No. 3902-A.

23 (Whereupon, the book above referred
24 to was marked defense exhibit No. 3902 for
25 identification; the excerpt therefrom, being

1 defense document 3039, was marked defense
2 exhibit 3902-A and received in evidence.)

3 MR. BLAKENEY: I shall not read the exhibit.

4 Mr. Furness will continue with the order of
5 proof denominated surrebuttal, Furness and Blakeney.

6 THE PRESIDENT: Major Furness.

7 MR. FURNESS: I offer in evidence the affidavit
8 of TANAKA, Ryukichi, who has already testified many
9 times before this Court, in surrebuttal of the testi-
10 mony of the witness Grebennik, exhibit No. 3854,
11 pages 38,289, et sequentia of the transcript, and in
12 reply to the testimony of the witness Batarshin,
13 exhibit No. 757, page 7811, cross-examination, page
14 32,069, and the witness Chernopyatko, exhibit No. 755,
15 page 7808, cross-examination page 32,155.

16 THE PRESIDENT: General Vasiliev.

17 GENERAL VASILIEV: We object to the intro-
18 duction of the affidavit of TANAKA, Ryukichi, because
19 it is repetitive and is irrelevant at the present
20 stage of surrebuttal. The witness was already examined
21 in court with regard to the Lake Khassan events. This
22 affidavit is at pages 22,716-22,720 of the transcript.
23 The cross-examination of this witness lasted almost
24 one and a half sessions, May 21 and 22, 1947, pages
25 22,721-22,758 of the transcript.

Besides, TANAKA, Ryukichi was once more produced to be examined about the sketch map of the Lake Khassan events offered by the defense during the cross-examination of another witness, MIURA, Kazuichi, and was examined on May 23, 1947 and on May 26, 1947, pages 22,943-22,966 of the transcript.

This affidavit contains nothing new and therefore it should be rejected.

THE PRESIDENT: Major Furness.

MR. FURNESS: If the Court please, this affidavit does contain many new matters in answer to the testimony of the witness Grebennik. I said when I cross-examined the witness Grebennik that I was cross-examining on the basis that I would be able to introduce evidence in reply. The Tribunal will recall that the witnesses, Batarshin and Chernopyatko, came in very late and were also cross-examined on the same matters. These matters related to the caliber of the artillery, the weapons which crossed the river, whether they were artillery or infantry, the caliber of such weapons, and also dealt with the withdrawal of troops on the 27 of July. The Tribunal will further recall that I cross-examined with regard to the presence of tanks and whether or not Soviet armament and Soviet men crossed the border line as contended by the Soviets.

1 THE PRESIDENT: By a majority the objection
2 is overruled and the document admitted on the usual
3 terms.

4 CLERK OF THE COURT: Defense document No. 2978
5 will receive exhibit No. 3903.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 3903 and received in evidence.)

9 MR. FURNESS: I will read that exhibit,
10 omitting the formal parts:

11 "2. As I testified in my affidavit of 15 May
12 1947 (exhibit No. 2628), I was, at the time of the
13 Chang-ku-feng Incident, commanding officer of the
14 25th Mountain Artillery Regiment, 19th Division. The
15 only Japanese artillery in the vicinity, either before
16 or during hostilities, consisted of rifles, 75 milli-
17 meter caliber, pack horse carried, and mortars, 15
18 centimeter caliber, short range, except a battery of
19 railroad artillery which on 8 August came to a point
20 8 kilometers to the north of Kogi which is to the west
21 of the Tumen River, and which did not fire until
22 9 August. All artillery, both before and during
23 hostilities, remained to the west of the River Tumen,
24 at no time crossed the river, and no artillery positions
25 were constructed to the east of the river.

1 "3. When I returned, having been ordered
2 back, on 28 July 1938, i.e., before hostilities
3 started, to our headquarters at Ranan, Korea, which is
4 about 100 kilometers from Chang-ku-feng, all men and
5 guns under my command, the rifles above referred to,
6 returned to that place with me, leaving only the 15
7 centimeter mortars in the vicinity of Chang-ku-feng.
8 When I returned to the west bank of the River Tumen
9 at 5:00 a.m. on 31 July 1938, all the other artillery,
10 i.e., the 15 centimeter mortars, was placed under my
11 command, and when the railroad artillery arrived, it
12 was also placed under my command.

13 "4. Prior to 26 July 1938 the only Japanese
14 troops in the vicinity to the east of the River Tumen
15 consisted of 40 border guards, infantry troops, armed
16 with no heavier armament than light machine guns.
17 Other infantry troops crossed the River Tumen from
18 the west bank to the east 26 July, but all these
19 latter troops were withdrawn to the west of the River
20 Tumen on 27 July, and did not cross again until 29 July
21 after the skirmish on that day commenced. None of the
22 latter troops took part in any hostilities until
23 after they started again on the morning of 31 July.
24 The infantry at no time before or during hostilities
25 had any heavier armament than anti-tank guns, 37

1 millimeter caliber, man carried, and trench mortars,
2 75 millimeter caliber, muzzle loading, short range,
3 and man carried.

4 "5. When I returned at 5:00 a.m. on the
5 morning of 31 July, I saw two Russian tanks which had
6 been disabled by the 15 centimeter mortars on the
7 northern slope of Chang-chun-feng, well within
8 Manchoukuan territory, even under the Russian claims.
9 Three more Russian tanks were disabled that day on the
10 northwestern slope of Sha-tsao-feng (Bezimyannya),
11 also well within Manchoukuan territory, under the
12 Russian claims. All five of these remained in their
13 disabled conditions on Manchoukuan territory, even
14 under the Russian claims throughout the hostilities.
15 In all ten Russian tanks crossed the border as claimed
16 by the Russians into Manchoukuan territory on 31 July.
17 When I arrived at 5:00 a.m. on 31 July, Russian
18 artillery was firing on objectives to the west of
19 the River Tumen, and several shells scored hits on my
20 men and guns.

21 "6. The Russian military headquarters was
22 at Yen-chu (Novokievsk), about 20 kilometers (12½
23 miles) from Chang-ku-feng."
24
25

THE PRESIDENT: Major Blakeney.

1 MR. BLAKENEY: I now offer in evidence the
2 affidavit of the witness YANO, Mitsuji, defense docu-
3 ment No. 3,084. The witness will testify concerning
4 boundary markers on the Manchukuo-Mongolia border in
5 the Nomonhan area, and the presence of Mongolian
6 guards on the eastern bank of the Haluha River,
7 rebutting testimony given in rebuttal by prosecution
8 witnesses Bykov, exhibit 3,357, transcript page
9 38,360, and, on cross-examination, transcript pages
10 38,389-93, 38,376-380; and Chogdan, exhibit 3,362,
11 transcript page 38,531 and, on cross-examination,
12 38,554-561.
13

14 THE PRESIDENT: General Vasiliev.

15 GENERAL VASILIEV: I object to the intro-
16 duction of this document, if the Tribunal please, be-
17 cause it repeats the evidence given by the same wit-
18 ness at some previous time. This testimony is at
19 pages 22,994-999 of the transcript. This affidavit
20 contains no new matter.
21

22 In paragraph 1 of his affidavit he says
23 that he repeats his former testimony. In paragraph
24 2 he says that he was shown affidavits of Bykov and
25 Chogdan. Paragraph 3 repeats evidence given by the
witness YANO, Mitsuji on May 26. In paragraph 4 he

1 repeats his evidence given previously and, besides,
2 draws his conclusions as to the demarcation of the
3 borderline. I submit that these conclusions are
4 absolutely immaterial.

5 THE PRESIDENT: Having admitted TANAKA's
6 affidavit, how can we reject this?

7 GENERAL VASILIEV: I personally think that
8 TANAKA's affidavit shouldn't be admitted; but, if
9 the Court had admitted that affidavit, that does not
10 mean that this affidavit should be admitted also. I
11 see no connection between these two affidavits.

12 THE PRESIDENT: By a majority the objection
13 is overruled and the document admitted on the usual
14 terms.

15 CLERK OF THE COURT: Defense document No.
16 3684 will receive exhibit No. 3904.

17 (Whereupon, the document above
18 referred to was marked defense exhibit
19 No. 3904 and received in evidence.)

20 MR. BLAKENFY: I read the exhibit commencing
21 with paragraph 1:

22 "1. I have already testified before this
23 tribunal, on 26 May, 1947, concerning my trips of
24 inspection of the Manchukuo-Mongolia border (exhibit
25 2650). As I testified at that time, I visited the

1 area in October 1938 (I had also been through the area
2 by automobile in September 1936) following the Haluha
3 River from near Handagaya to near Nomotsohrin without
4 finding Mongolians on the right bank of the river.

5 "2. I have been shown exhibits 3857 and
6 3362, in which the witnesses Bykov and Chogdan
7 respectively have testified that the Manchukuo-Mongolia
8 boundary was to the east of the Haluha River, and their
9 testimony on cross-examination in which they state
10 that that boundary was marked with border markers
11 before the Nomonhan Incident of 1939.

12 "3. From my two inspections of this area I
13 can testify positively that there were no border
14 markers of any nature between obos, nor were there in
15 either 1936 or 1938 any markers or poles on top of
16 the obos bearing inscriptions in Mongolian. In fact,
17 a feature of that country is the extreme scarcity of
18 wood of any description. The country is steppe, and
19 there is nothing to obstruct the view except where
20 there are occasional small hills; in my tours I made
21 various side-trips from the route, and constantly
22 examined the surrounding country through 8-power
23 field glasses. I saw neither inscribed markers on
24 the Nomonhan Burd, Huld Ulyn and Ers Ulyn obos, nor
25 poles or border markers of any description between

1 these obos, all of which, however, I did visit and
2 inspect. At Nomonhan Burd obo there was a building
3 of the Nomonhan branch of the Manchukuo police, in
4 which resided seven or eight police.

5 "4. I have traveled also on other borders
6 of the so-called Mongolian People's Republic, but
7 have never in any area seen wooden border markers
8 on these borders. On such parts of the border as are
9 marked with stone obos, those obos are erected in
10 pairs. Nomonhan Burd obo is, as testified to by
11 Chogdan, a pair of obos; but when they are used for
12 border markers the pairs of obos are not confined to
13 one pair but are continuous. There are other
14 instances, in various border areas of Mongolia, of
15 a single pair (or even triplet or more) of obos, but
16 these do not mark the borders because one pair alone
17 does not establish a line.

18 "5. During my 1938 trip I met Manchukuoan
19 cavalry, border guards or police at Handagaya, Nomo-
20 tsohrin, Amkoro and Nomonhan burd."

22 I offer in evidence the affidavit of the
23 witness YOKOI, Tadamichi, defense document 3083.
24 The purpose of this witness' testimony is the same
25 as in the case of the preceding witness.

THE PRESIDENT: General Vasiliev.

1 GENERAL VASILIEV: I object to the intro-
2 duction of this document because it repeats what was
3 said in the preceding document; and, therefore, it
4 is repetitive.

5 THE PRESIDENT: By a majority, the objection
6 is overruled and the document admitted on the usual
7 terms.

8 CLERK OF THE COURT: Defense document No.
9 3083 will receive exhibit 3905.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 3905 and received in evidence.)

13 MR. BLAKENEY: I read the exhibit:

14 "1. I am a former major-general of the
15 Japanese Army, at present residing at Tokyo-to, Meguro-
16 ku, Tairamachi 118. From May 1938 to 28 July 1939 I
17 served as chief of the Hailar Military Special Ser-
18 vice detachment.

19 "2. Immediately after taking office at
20 Hailar, I made a trip through the area of the eastern
21 bank of the Haluha River to inspect conditions around
22 the border. That country is a steppe area with
23 undulating terrain features, without trees, and a
24 wide view is, therefore, to be had. I made frequent
25 excursions for some distance toward the river, and to

1 within a few kilometers of it, inspecting the whole
2 country adjacent to it both in person and with
3 field glasses.

4 "3. At that time I found Manchukuoan or
5 Japanese units stationed in the area to be as follows:

6 "Assursum (northwest of Buir Nor) - 1 Man
7 chukuoan cavalry squadron (about 100 men);

8 "Amkoro - several Japanese MP's, about 20
9 Manchukuoan police;

10 "Nomotsohrin - 1 Manchukuoan cavalry section,
11 (about 20 men and horses);

12 "Nomonhan - 7 Manchukuoan police;

13 "Mandagaya - 2 correspondents of Hailar
14 Special Service detachment, about 10
15 Manchukuoan police.

16 "I found no Outer Mongolian border guards at
17 all on the East or right bank of the Haluha River.
18 No one molested my party or attempted to prevent us
19 from travelling in the area. Nor did I see any trace
20 of border markers, either in the form of paired obos
21 (except the one pair at Nomonhan Burd) or in the form
22 of wooden or other border monuments. From my in-
23 spection of the area I can say that such markers were
24 non-existent."
25

THE PRESIDENT: Is that the end of UMEZU's

1 case, Major Blakeney -- TOGO's case?

2 MR. BLAKENEY: This is now the beginning of
3 ULEZU's case. That was the end of TOGO's case.

4 THE PRESIDENT: We will adjourn now until
5 half-past nine tomorrow morning.

6 (Whereupon, at 1555, an adjourn-
7 ment was taken until Tuesday, 10 February,
8 at 0930.)
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